



DECISION ON ADMISSIBILITY AND MERITS
(delivered on 6 June 2003)

Case nos. CH/00/6183
and CH/00/6231

Dušanka BILBIJA, Gordana STEVIĆ, Ljubica BAJILO, Goran KOVRLIJA, and Maja MANDIĆ
and Stjepan PEPIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 2 June 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Miodrag PAJIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Andrew GROTRIAN

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, Deputy Registrar

Having considered the aforementioned applications introduced pursuant to Article VIII(1) of the Human Rights Agreement (the "Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina;

Adopts the following decision pursuant to Articles VIII(2) and XI of the Agreement and Rules 34, 49(3), 50, 52, 57, and 58 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. These cases concern the continued operation of the first private school of higher education in the Republika Srpska —the Higher Business School of Industrial Engineering, Organisation and Management in Prijedor (the “Higher Business School”)— and the validity of the diplomas issued by that School to its students.

2. The Higher Business School was registered in the Republika Srpska on 31 July 1995 pursuant to a procedural decision of the Ministry of Education of the Republika Srpska of 14 July 1995 establishing the School. It enrolled its first class of students in the school year 1995-1996. The Higher Business School pursued its educational activities undisturbed until 23 July 1999, when the Ministry of Education issued a procedural decision prohibiting the School from admitting new students for the school year 1999-2000 until a deficiency in terms of the capacity of the premises of the School in Prijedor was removed. Thereafter, the School entered into lease contracts for three additional premises in Prijedor, and it admitted new students. On 14 April 2000, the Ministry of Education issued a procedural decision annulling the admission of new students for the school year 1999-2000. On 19 April 2000, the Ministry of Education issued another procedural decision prohibiting the operation of the School. Both decisions were due to the School’s alleged non-compliance with the procedural decision of 23 July 1999. The School appealed against these decisions to both the Ministry of Education and the Supreme Court of the Republika Srpska, but three years later, these appeals are still not fully decided, leaving the School with an uncertain legal status. Since that time, the Higher Business School has *de facto* continued to admit new students, to educate them in accordance with its curriculum and syllabus, and to graduate them. However, the Ministry of Education has issued statements to the media and the public refusing to recognise the validity of the diplomas awarded by the Higher Business School, thereby injuring the students and the reputation of the School.

3. The applications raise issues under Article 2 of Protocol No. 1 (right to education) to the European Convention on Human Rights (the “Convention”), Article 1 of Protocol No. 1 (right to peaceful enjoyment of possessions) to the Convention, and discrimination in the enjoyment of these rights. The applications further raise issues under paragraph 1 of Article 6 (right to a court) and Article 13 (right to an effective remedy) of the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

4. The applicant Dušanka Bilbija submitted her application on 5 October 2000, and it was registered on 16 October 2000. The application was submitted on her own behalf, as a professor and shareholder, and on behalf of the alleged victim Vladimir Trkulja, the applicant’s student.

5. The applicant Stjepan Pepić submitted his application no. CH/00/6231 on 9 November 2000, and it was registered on 10 November 2000. The applicant Pepić is represented by his authorised representative, Slavica Utješanović, a professor in Prijedor.

6. In the application, the applicant Bilbija requested that the Chamber order an unspecified provisional measure. On 8 December 2000, the Chamber rejected that request.

7. On 27 November 2000, the applicant Bilbija submitted a written request to the Chamber to exercise its authority pursuant to paragraph 2 of Rule 18 of the Chamber’s Rules of Procedure¹ to inform the public and press about her application. The Chamber declined to respond to this request.

8. On 15 November 2001, the Chamber transmitted the Bilbija application to the respondent Party for its observations under Article 1 of Protocol No. 1 to the Convention. On the same day, the Chamber transmitted the Pepić application to the respondent Party for its observations under Article 2 of Protocol No. 1 to the Convention.

¹ At the time, paragraph 2 of Rule 18 of the Chamber’s Rules of Procedure provided as follows: “At any stage in the examination of an application, the Registrar may communicate information to the press to an extent compatible with the legitimate interests of the parties and subject to any special directions by the Chamber.”

9. On 15 November 2001, the Chamber also invited the Office of the High Representative (“OHR”) to provide information and relevant documentation on the cases. On 27 December 2001, the Deputy High Representative for Legal Affairs responded that the OHR does not seek to be involved in the cases.

10. On 24 January 2002, the respondent Party submitted observations on the admissibility and merits of both applications. On 11 February 2002, the applicant Bilbija submitted observations in reply to the respondent Party’s observations. On 15 February 2002, the applicant Pepić submitted observations in reply to the respondent Party’s observations. The applicant Bilbija submitted additional information to the Chamber on 13 November 2000, 27 November 2000, 4 January 2001, 16 August 2001, and 19 March 2002.

11. On 26 July 2002, the Chamber wrote to the applicant Bilbija requesting that she provide written authorisation to represent the interests of her student, Vladimir Trkulja, before the Chamber. The Chamber expressly warned the applicant that if she did not provide the necessary authorisation, it might proceed to consider the application only with respect to her legal interests. The applicant Bilbija did not respond to this letter.

12. On 11 September 2002, the Chamber wrote once again to the applicant Bilbija asking her to clarify the applicant(s) and alleged victim(s), to present an authorisation from any student of the Higher Business School represented in her application, to provide information concerning the dates of graduation of those students, and to explain the manner in which the Ministry of Education has refused to recognise the diplomas of the students represented in her application. The Chamber sent a similar letter to the authorised representative of the applicant Pepić. On the same day, the Chamber also wrote to the respondent Party asking it to provide information concerning whether the Ministry of Education of the Republika Srpska officially recognises the diplomas granted to students of the Higher Business School.

13. On 23 September 2002, both applicants and the respondent Party responded to the Chamber’s requests for information described in the preceding paragraph. Ms. Bilbija provided original authorisations to represent the interests of four students of the Higher Business School (the applicants Gordana Stević, Ljubica Bajilo, Goran Kovrlija, and Maja Mandić). She also offered to provide more authorisations from additional students if necessary. She noted that the student Vladimir Trkulja, identified as the alleged victim in the original application, now lives abroad. She provided no authorisation letter from him.

14. On 20 December 2002, the Chamber informed the applicants and the respondent Party that it would hold a joint public hearing on the admissibility and merits of the cases. The Chamber further invited the parties to propose witnesses to offer testimony at the public hearing. The respondent Party responded on 23 December 2002. The applicant Bilbija and representative Utješanović each responded on 31 December 2002 and 10 January 2003.

15. On 20 December 2002, the Chamber also invited the Organisation for Security and Cooperation in Europe, Mission to Bosnia and Herzegovina (the “OSCE”) to participate as *amicus curiae* in the proceedings, in particular at the public hearing. The OSCE did not respond to this invitation.

16. On 27 January 2003, the Chamber requested the respondent Party to provide additional information concerning whether any students of the Higher Business School had been enabled to continue their studies at the Faculty of Economy of the Banja Luka University. The respondent Party provided such information on 28 January 2003.

17. From 24 January to 29 January 2003, the Chamber delivered invitation letters and/or summons to appear at the public hearing on 3 February 2003 in Prijedor to the applicants, their authorised representatives, the Agent of the respondent Party, twelve witnesses, and two team members representing the respondent Party.

18. On 30 January 2003, the applicant Bilbija submitted additional information to the Chamber.

19. On the morning of 3 February 2003, the Chamber, joined by representatives of the parties, visited the premises of the Higher Business School in Prijedor. Mr. Radmilo Kondić, the Director of the School, led the tour of the premises.

20. Thereafter, on 3 February 2003, the Chamber held a joint public hearing at the Hotel Prijedor on the admissibility and merits of the cases. Dušanka Bilbija was present, representing herself and four other student applicants, Gordana Stević, Ljubica Bajilo, Goran Kovrlija and Maja Mandić, who were not present. Slavica Utješanović was present, representing the applicant, Stjepan Pepić, who also was not present. The respondent Party was represented by Milan Dupor, its Agent, who was assisted by Nebojša Kaurin and Zlatko Kelečević as team members from the Ministry of Education of the Republika Srpska. Nenad Suzić, the former Minister of Education, who personally received the Chamber's invitation letter and summons on 28 January 2003, failed to appear at the public hearing. All other witnesses who had been invited and summoned to appear at the public hearing did so. At the beginning of the public hearing, Mss. Bilbija and Utješanović, followed by Mr. Dupor, offered opening statements on behalf of their respective parties. The President of the Chamber then called the following witnesses to offer testimony and answer questions put to them by the members and the parties: Radmilo Kondić, Zoran Becner, Stanko Stanić, Arsenije Radočaj, Gordana Popović, Dragana Trgić, Radovan Mrkela, Dalibor Kališ, Goran Arambašić, Jugoslav Davidović, and Vid Ožegović (see paragraphs 66-87 below). Thereafter, the members of the Chamber asked questions of the representatives of the respondent Party and the applicants. Ms. Utješanović and Mr. Dupor then offered closing statements.

21. On 5 February 2003, the Dean of the Faculty of Economy of the Banja Luka University submitted certain information requested by the Chamber at the public hearing.

22. On 7 February 2003, the applicant Bilbija submitted additional information and documents requested by the Chamber at the public hearing.

23. On 14 April 2003, the Chamber requested the respondent Party to submit additional information from the Ministry of Education of the Republika Srpska. It submitted this information on 22 April 2003.

24. The Chamber deliberated on the admissibility and merits of the applications on 9 November 2001, 7 September 2002, 8 November 2002, 7 and 10 January 2003, 3 and 4 February 2003, 7 May 2003, and 2 June 2003. It adopted the present decision on admissibility and merits on 2 June 2003. Considering the similarity between the facts of the cases and the complaints of the applicants, the Chamber decided to join the present applications in accordance with Rule 34 of the Chamber's Rules of Procedure on the same day it adopted the present decision.

III. STATEMENT OF THE FACTS

A. Background facts with respect to the Higher Business School

25. On 29 August 1994, the Court of First Instance in Banja Luka registered the foundation of the "Higher Business School² of Industrial Engineering, Organisation and Management sa p.o. in Prijedor" (the "Higher Business School"). The applicant Dušanka Bilbija was designated as one of six founders of the School, including five individuals and the Local Community "Prijedor Centre".

26. In 1995, Mr. Radmilo Kondić prepared a feasibility study on the establishment of a Higher Business School of Industrial Engineering, Organisation and Management. That study concluded that it was justified to establish such an institution pursuant to the Law on Higher Schools of the

² For the sake of clarification, a "higher school" is a post-secondary school but it is not equivalent to a university. Attendance at a higher school is entirely voluntary. Students of a higher school attend 4 semesters of study (as opposed to 8 or more semesters of study at a university), and they receive a diploma that is different from and less distinguished than a diploma from a university. In essence, a diploma from a higher school indicates education on par with the first two years of study at a university.

Republika Srpska. No such programme of education existed in the Republika Srpska. The school would be self-financed through tuition fees. According to the proposed budget, “objectively, the school could realise the status of economic self-sustainability if it registered at least 500 students per year.” The school would operate in one or two shifts, depending on the number of students, with students having at least 25 classes and practical training per week. The report describes the conditions of study as follows: “a student may decide whether or not to attend classes because the law does not oblige him/her to do that. However, the school will place that obligation on preliminary exams, with a note that a student may not take an exam if he/she has not passed the preliminary exam.” The main location of the school would be in Prijedor in premises rented from the Municipal Assembly of Prijedor. This feasibility study was presented to the Ministry of Education of the Republika Srpska, along with other required documents, in order to gain registration for the Higher Business School.

27. On 14 July 1995, the Higher Business School was established pursuant to a procedural decision issued by the Ministry of Education, Science and Culture of the Republika Srpska on 14 July 1995. In that decision, the Ministry established that the Higher Business School met all the requirements to commence its work for the school year 1995-1996, and it ordered that the announcement for the admission of first-year students should be published by 31 July 1995. The decision was issued on the basis of Articles 9 and 87 of the Law on Higher Schools (see paragraphs 92, 96 below). The decision reasons that in accordance with Article 6 of the Law on Higher Schools, a higher school may be founded by individual and legal persons other than the Government of the Republika Srpska. In this case, the founders of the Higher Business School, a group of individuals from Prijedor and the Local Community Centre, submitted proper documentation to establish the School. In addition, an Expert Commission appointed by the Minister of Education, Science and Culture established on 4 July 1995 that the founders had ensured premises, cabinets and equipment for conducting studies, they had adopted a curriculum and syllabus, and they had ensured potential candidates to serve as teachers.

28. Based upon the decision of 14 July 1995, the Higher Business School was registered with the Court of First Instance in Banja Luka as the first private, *i.e.* non-governmental, school in the Republika Srpska on 31 July 1995. The form of the enterprise is not indicated in any of the registration documents. The letters “sa p.o.” in the official name of the Higher Business School establish that the School, *i.e.* its founders, takes “full responsibility” for its obligations.

29. On 15 February 1996, the Ministry of Education, Science and Culture of the Republika Srpska issued two procedural decisions granting consent for the curriculum and syllabus and for the statute of the Higher Business School. Both decisions state that the respective documents conformed to the relevant provision of the Law on Higher Schools.

30. According to information provided to the OHR on 15 September 2000, the Higher Business School is financed exclusively by tuition paid by students in the amount of 300 KM per year. In 2000, the School employed 13 professional teachers, all trained in business education (including both Dušanka Bilbija and Slavica Utješanović). The School also has 24 of its own books for basic and specialised business studies. According to the School, these books are its greatest asset. The School conducts classes at its main location in Prijedor, and also in Gradiška and Prnjavor. In Prijedor, its enrollment (including both full-time and part-time students) has ranged from approximately 500 students in 1995-1996 to 950 students in 1997-1998. In 1999-2000, its enrollment was 650 students. However, the School notes that the “active number of students is significantly lower” because many students have either left the school or are formally registered but do not attend exams. The School conducts classes for full-time students only in Prijedor, 30 weeks per year, and according to the School, it has “more places than is objectively required”, in terms of the facilities for students. As of 15 September 2000, the School had graduated 203 students.

31. According to the submission to the OHR on 15 September 2000, the curriculum of the Higher Business School includes courses like, for example, marketing, business management, finance, accounting, management statistics, business ethics, and computer technology. Full-time students complete four semesters of study, each composed of 5 or 6 courses for a total of 20 credit hours per semester.

32. Evidently in 2000 the Ministry of Education recommended that certain students be admitted to the Higher Business School. For example, on 21 February 2000, the Ministry of Education recommended that Vladimir Trkulja (the initial alleged victim in the Bilbija application) be granted admission to the Higher Business School. On 14 March 2000, the Ministry of Education further recommended that the applicant Pepić be admitted to the Higher Business School.

33. On 23 May 2000, the Student Board for the Protection of the Rights of Students and Professors of the Higher Business School signed an Agreement on joint actions for the protection of students' human rights. The agreement is signed by Gordana Popović, for the Student Board, and by twelve professors of the School, including both Dušanka Bilbija and Slavica Utješanović. The parties to the Agreement state that they shall "take all necessary measures for implementation" of Article 2 of Protocol No. 1 to the Convention. The professors expressed "their complete loyalty to the students in opposing the illegal procedural decisions of the Ministry of Education of the Republika Srpska" (as described below), and they confirmed "their dedication to the students in their fight for the protection of their rights".

34. The Higher Business School continues to operate to date in Prijedor.

B. Domestic proceedings with respect to the Higher Business School

1. First instance proceedings

35. On 21 November 1996, the Education Inspector, Milenko Ložajić, performed an inspection of the Higher Business School. The minutes of that inspection establish that consent for operation of the School was granted, as well as approval for the statute, curriculum, and syllabus of the School. Teachers and instructors were appointed in accordance with the law. Classes are given in two rooms at the Fire Hall in Prijedor. Documentation is administered properly.

36. On 13 and 17 May 1999, two Education Inspectors, Aleksandar Milić and Rade Zorić, performed an additional inspection of the Higher Business School. According to the minutes, "the inspection review was carried out in order to inspect the requirements for further operation, upon the request of the Higher Business School for continuation of operations at the centres for part-time studies in Gradiška and Prnjavor". Once again, the Inspectors confirmed that the School fulfilled the requirements for commencement of operations and performance of activities as of the school year 1995-1996 and that the Ministry of Education had granted approval for the statute, curriculum, and syllabus of the School. The minutes further establish the appointment and qualifications of instructors and associate instructors. With respect to the premises, the minutes state: "Classes in Prijedor are held in the premises of the Fire Hall in Prijedor. The School has a single classroom furnished with new furniture for 120 students and a lab with five computers and two overhead projectors." The minutes further establish that for the school years 1995-1996 through 1998-1999, a total of 881 full-time students and 679 part-time students were admitted to the Higher Business School in Prijedor. Up until 17 May 1999, the School had graduated 49 students. The minutes state that documentation and files were properly maintained and the regulation as well as schedule of exams was in accordance with the law. The minutes do not state that the capacity of the premises of the Higher Business School in Prijedor is inadequate or insufficient, nor do they explicitly identify any other deficiencies.

37. On 23 July 1999, based upon Article 10 paragraph 1 of the Law on Higher Schools, the Ministry of Education of the Republika Srpska issued a procedural decision (no. 6-01-1416/99) prohibiting the Higher Business School from admitting new students for the school year 1999-2000 until the deficiency established in the minutes of the Education Inspection Service of 17 May 1999 has been cured. The Ministry further ordered the School to rectify the established deficiency within 10 days. The procedural decision warns that if the deficiency is not removed, then "the Ministry of Education will be compelled to terminate the further operation of the Higher Business School in Prijedor". In the reasoning, the decision states: "The minutes of the Inspection Service established that due to the excessive number of students and inadequate capacity of the premises for the teaching process, the School is not capable of realising its syllabus and curriculum, thus failing to meet the requirements set out in Article 1 of the Law on Higher Schools". The decision allowed a complaint against it to be filed within 8 days to the Minister of Education. It is signed by Dr. Nenad

Suzić, the Minister of Education.

38. On 5 April 2000, Educator Inspectors Zlatko Kelečević and Vid Ožegović (both present at the public hearing) performed an inspection review “to inspect the implementation of the measures ordered by the procedural decision of the Ministry of Education no. 6-01-1416-99 of 23 July 1999”. The minutes establish that the Director of the Higher Business School “accepted implementation of the measures ordered” and “submitted documentation on the fulfilment of requirements for admission of new students”, including lease contracts for three separate premises in Prijedor. On 22 August 1999, the Local Community of Prijedor-Centre issued a decision authorising the Director of the School to continue the admission of students. He acted upon that decision and admitted 155 full-time and 506 part-time students for the school year 1999-2000. The minutes establish the following: 1) “the number of permanently employed teachers is the same as was established by the previous minutes”; 2) “the number of students has increased to 661 newly admitted (full and part-time), 141 of whom graduated”; and 3) “the space used for classes remains the same: a classroom for 120 students and a lab with five computers and two overhead projectors”. The minutes state that “according to the Director, that space suffices for the classes, so the School does not use the remainder of the rented premises”. The minutes further contain a note concerning full-time students: “Of the total number of admitted students (881 from the previous minutes plus 155 newly admitted), 155 first year and 30 second year students attend classes, whilst the remainder completed their coursework”. The minutes do not explicitly state that the capacity of the premises of the Higher Business School in Prijedor are inadequate or insufficient, nor do they explicitly identify any other deficiencies.

39. On 14 April 2000, the Ministry of Education of the Republika Srpska in Banja Luka issued a procedural decision (no. 6-01-952/2000) annulling the admission of first-year students at the Higher Business School in Prijedor for the school year 1999-2000. The decision reasons that in accordance with the minutes of the Education Inspector of the Republika Srpska dated 17 May 1999, “the Higher Business School in Prijedor, with respect to the above-mentioned school premises, has admitted a disproportionately large number of full-time and part-time students, which has resulted in violations of a number of articles of the Law on Higher Schools”, namely Articles 7, 16, and 27 of the Law on Higher Schools (see paragraphs 91, 94, 95 below). The reasoning further states that in the inspection review performed on 5 April 2000, the Education Inspectors found that the Higher Business School failed to comply with the procedural decision of 23 July 1999 in that it admitted 661 new students, yet “the school premises for performing school activities have remained the same (*i.e.*, one classroom for 120 students plus one smaller laboratory)”. The decision states that an appeal/complaint has no suspensive effect. It is signed by Dr. Nenad Suzić, the Minister of Education.

40. On 19 April 2000, the Ministry of Education of the Republika Srpska in Banja Luka issued another procedural decision (no. 6-01-953/2000) prohibiting the work of the Higher Business School in Prijedor due to its failure to fulfil the conditions prescribed for the working and performing activities. The decision establishes that the students of the Higher Business School in Prijedor will be permitted to continue their studies in a corresponding higher school in the Republika Srpska, to be subsequently determined by the Ministry of Education. The decision of 19 April 2000 relies upon the identical reasoning as the decision of 14 April 2000, described above. The decision states that an appeal/complaint has no suspensive effect. It is signed by Dr. Nenad Suzić, the Minister of Education.

2. Appeals and complaints by the Higher Business School

41. On 3 May 2000, the Higher Business School submitted a complaint to the Ministry of Education of the Republika Srpska in Banja Luka against the procedural decision of 23 July 1999 (no. 6-01-1416/99). The School requested the Ministry, in accordance with its supervisory authority, to annul the procedural decision of 23 July 1999 because it was issued by an unauthorised organ. The School noted that the challenged procedural decision does not state which regulation authorises the Minister to act as the first instance organ in such a case. Relying upon the Law on General Administrative Proceedings, the Law on State Administration, and the Law on the Education Inspection, the School concludes that no such regulation exists. According to the School, “the Education Inspector is exclusively in charge of issuing such first instance procedural decisions that

order the implementation of certain measures and actions". In addition, the School contends that no irregularities, within the meaning of the Law on State Administration, were established in the minutes of the Education Inspector of 17 May 1999 which could support the measures and actions required by the Minister in the procedural decision of 23 July 1999.

42. On 3 May 2000, the Higher Business School submitted a complaint to the Ministry of Education of the Republika Srpska in Banja Luka against the procedural decision of 14 April 2000 (no. 6-01-952/2000). The School requested the Ministry, in accordance with its supervisory authority, to annul, or in the alternative, to postpone enforcement of the decision of 14 April 2000. The School argued that the Ministry of Education was not the competent body to issue the decision of 14 April 2000; therefore, that decision was illegally issued by an unauthorised body. According to the School, the Inspector of the Republika Srpska "is, exclusively, the actual competent body for performing the duties of inspection supervision, recording the minutes, issuing procedural decisions in the first instance which order execution of certain actions and order security or other protective measures". The School contended that under the applicable law, the Ministry of Education is not authorised to usurp the competence of the Inspector and decide in the first instance. The School highlighted that the decision of 14 April 2000 provides that a complaint against it may be filed with the Ministry, the same body that issued the decision in the first instance.

43. Based upon similar reasoning, on 3 May 2000, the Higher Business School also submitted a lawsuit in administrative dispute proceedings to the Supreme Court of the Republika Srpska against the procedural decision of 14 April 2000 (no. 6-01-952/2000) seeking annulment of that decision. In that lawsuit, the School emphasised that the minutes of the Education Inspector of 17 May 1999 and 5 April 2000, upon which the decision of 14 April 2000 was based, established "no irregularities or unlawful actions" and "contain no findings of violations of the law by the claimant". Therefore, the School submitted that these minutes "could not have served as the grounds for the competent body, the Education Inspector of the Republika Srpska, to issue the procedural decision in dispute, and particularly not for the Ministry of Education, as the incompetent body for deciding in the first instance". Lastly, the School claimed that the applicable laws do not prescribe "the measure of annulling the admission of students due to a violation of provisions concerning higher education".

44. On 3 May 2000, the Higher Business School also submitted a complaint to the Ministry of Education of the Republika Srpska in Banja Luka against the procedural decision of 19 April 2000 (no. 6-01-953/2000). On the same day, the School submitted a lawsuit in administrative dispute proceedings to the Supreme Court of the Republika Srpska against the procedural decision of 19 April 2000 (no. 6-01-953/2000), seeking annulment of that decision. The School raised the same arguments as in its two complaints against the decision of 14 April 2000, as described above.

45. Lastly, on 3 May 2000, the Higher Business School submitted a letter to the High Representative about human rights violations in the sphere of education.

3. Second instance proceedings

46. On 12 May 2000, the Ministry of Education of the Republika Srpska in Banja Luka issued a procedural decision (no. 6-01-1073/2000) in which it rejected the complaint of the Higher Business School against the procedural decision of 23 July 1999 (no. 6-01-1416/99), which ordered the School to rectify a certain deficiency within 10 days. Relying upon Article 10 paragraph 1 of the Law on Higher Schools, the decision reasons that the procedural decision of 23 July 1999 was issued by the competent body. The decision is final (*konačno*) in the administrative proceedings, but an administrative dispute may be initiated against it before the Supreme Court of the Republika Srpska. It is signed by Dr. Nenad Suzić, the Minister of Education.

47. Also on 12 May 2000, the Ministry of Education of the Republika Srpska in Banja Luka issued a procedural decision (no. 6-01-1072/2000) in which it rejected the complaint of the Higher Business School against the decision of 19 April 2000 (no. 6-01-953/2000), which prohibited the work of the Higher Business School. Relying upon Article 45 of the Law on State Administration, the reasoning explains that "the Minister of Education is responsible for the lawfulness of the Ministry's operations, *ipso facto* being competent to solve cases in the competence of the Republic Education Inspection Service and to issue procedural decisions in the first instance, especially in cases when the

Inspection Service failed to do so—all with a view to the lawfulness of the Ministry's operations". The decision further cites Article 10 paragraph 1 of the Law on Higher Schools to support the Minister's competence to ban operations of the School. The decision is final (*konačno*) in the administrative proceedings, but an administrative dispute may be initiated against it before the Supreme Court of the Republika Srpska. It is signed by Dr. Nenad Suzić, the Minister of Education.

48. On 16 May 2000, the Ministry of Education of the Republika Srpska in Banja Luka issued a procedural decision (no. 6-01-1214/2000) entitling the students of the Higher Business School in Prijedor to continue their studies, in accordance with the curriculum and syllabus they had commenced, at the Faculty of Economics of the Banja Luka University. The decision grants the Faculty of Economics two years to organise further classes for the students from the Higher Business School. The decision reasons that in accordance with the decision of 19 April 2000 (no. 6-01-953/2000), which prohibited the work of the Higher Business School, it was necessary for the Ministry to establish an institution of higher learning at which the students of the Higher Business School in Prijedor could continue their studies. Therefore, the Ministry reached an agreement with the Faculty of Economics of the Banja Luka University to provide such continuation of studies to the students of the Higher Business School. This decision is signed by Dr. Nenad Suzić, the Minister of Education.

49. In response to inquiries from the Chamber, the respondent Party and the Dean of the Faculty of Economics of the Banja Luka University provided information on the implementation of the procedural decision of 16 May 2000. According to the Dean, the Faculty of Economy of the Banja Luka University posted a public announcement on its notice boards in the Faculty of Economy informing students of the Higher Business School about their right to continue their studies at the Faculty of Economy. This announcement was also published in the public media in the Republika Srpska (*Glas Srpski, RTRS, Alternativna TV, Nezavisna TV*). The announcement states that students who register up to 1 October 2000 shall pay only the administrative costs of transfer (30 KM), while students who register later shall bear the full costs of transfer. Students shall be permitted to continue their studies at the premises of the Faculty of Economy under the curriculum and syllabus they commenced. After completing such studies, students shall have the right to register in the third year at the Faculty of Economy and to continue their studies and to graduate. Twenty-two students of the Higher Business School submitted written applications to register at the Faculty of Economy. However, no student was approved to continue his/her studies at the Faculty of Economy (see paragraph 80 below). According to a statement of the Ministry of Education of the Republika Srpska of 24 January 2003, "the Scientific-Teaching Council of the Faculty of Economy in Banja Luka decided that the Faculty of Economy in Banja Luka cannot organise classes for students of the Higher Business School in Prijedor due to differences between the curricula".

4. Further appeals and complaints by the Higher Business School

50. On 22 May 2000, the Higher Business School submitted a lawsuit in administrative dispute proceedings to the Supreme Court of the Republika Srpska against the procedural decision of 12 May 2000 (no. 6-01-1073/2000), seeking annulment of that decision, which rejected the School's complaint against the procedural decision of 23 July 1999 (no. 6-01-1416/99). The School argued that the decision misapplied the law. Once again the School emphasised that the minutes of the Education Inspector of 17 May 1999 contained no findings of deficiencies or violations of the law by the claimant. The School argued that "by fabricating deficiencies, the Minister of Education prohibits the admission of students in the middle of the admission process when a great number of students have already been admitted, and then afterwards he sends recommendations for the admission of students for the first year of studies". The School further repeated that the Inspector, not the Ministry, is the competent body to issue a decision concerning the supervision of higher schools in the first instance, while the Ministry is the competent body to review such a decision in the second instance.

51. In addition, on 22 May 2000, the Higher Business School submitted a request to the Ministry of Education of the Republika Srpska for postponement of enforcement of the procedural decision of 12 May 2000 (no. 6-01-1073/2000) until the Supreme Court issues a final decision in the matter.

52. On 22 May 2000, the Higher Business School also submitted a lawsuit in administrative

dispute proceedings to the Supreme Court of the Republika Srpska against the procedural decision of 12 May 2000 (no. 6-01-1072/2000), seeking annulment of that decision, which rejected the School's complaint against the procedural decision of 19 April 2000 (no. 6-01-953/2000). The School raised the same arguments as in its previous lawsuit against the decision of 19 April 2000.

5. Subsequent additional proceedings

53. On 3 June 2000, the Higher Business School submitted an initiative to the Constitutional Court of the Republika Srpska to assess the constitutionality of paragraph 7 of Article 38 of the Law on Excise and Tax on Trade of the Republika Srpska. The challenged provision provides for a tax on the trade of certain services, including education, but it does not apply to such services if they are performed by an institution funded by the general budget (*i.e.*, a state-funded institution). Thus, the School reasons that, "the same services for users are subject to taxes when they are provided by enterprises, private companies, and other types of organisations (non-governmental schools), but they are not subject to taxes when they are provided by institutions funded by the general budget," which is contrary to Articles 50, 54, and 63 of the Constitution of the Republika Srpska. The Assembly of the Republika Srpska adopted amendments to the Law on Excise and Tax on Trade, which revoked the tax on education applicable to privately-funded institutions. Two days later, the Constitutional Court of the Republika Srpska rejected the initiative of the Higher Business School.

54. On 24 July 2000, the Ministry of Education of the Republika Srpska in Banja Luka issued a procedural decision (no. 6-07-1727/2000) allowing the enforcement of the decision of 19 April 2000 (no. 6-01-953/2000), which prohibited the work of the Higher Business School in Prijedor. The decision notes that on 12 May 2000, the Ministry rejected the objection of the Higher Business School against the decision of 19 April 2000, yet the Director of the School has continued to work and to admit new students, regardless of the prohibition. This decision is signed by Dr. Nenad Suzić, the Minister of Education. On the same day, the Ministry requested the assistance of two police officers to forcibly close down and seal the official premises of the Higher Business School. According to submissions in both cases, these efforts to close the School were prevented by the OHR and the International Police Task Force (IPTF).

55. On 3 August 2000, the Higher Business School submitted a complaint to the Ministry of Education of the Republika Srpska in Banja Luka against the procedural decision of 24 July 2000 (no. 6-07-1727/2000). The School argued that in accordance with Article 276 of the Law on General Administrative Proceedings, administrative enforcement may be performed for the fulfilment of non-pecuniary obligations, but not for the enforcement of protective measures. The order prohibiting the work of the School is properly characterised as a protective measure, not as a pecuniary obligation; therefore, the conclusion on enforcement has no basis. The School further disputed the competence of the first instance organ to issue the conclusion on enforcement.

6. Rulings in administrative disputes

56. On 13 November 2002, the Supreme Court of the Republika Srpska issued a procedural decision (no. U-464/2000) rejecting as impermissible the administrative dispute initiated by the Higher Business School against the procedural decision of 19 April 2000 (no. 6-01-953/2000). The Supreme Court reasoned that the procedural decision appealed against was issued in the first instance, and it included instructions for filing an appeal within the administrative proceedings. However, an administrative dispute may only be initiated against an administrative decision issued in the second instance, unless the first instance decision fails to provide for an appeal within the administrative proceedings.

57. On 18 December 2002, the Supreme Court of the Republika Srpska issued a second procedural decision (no. U-465-2000) rejecting as impermissible the administrative dispute initiated by the Higher Business School against the procedural decision of 14 April 2000 (no. 6-01-952/2000). The Supreme Court relied upon the same reasoning as set forth in its decision of 13 November 2002.

58. On 30 January 2003, the Higher Business School submitted a request for extra-ordinary review of the decisions of 13 November 2002 (no. U-464-2000) and 18 December 2002 (U-465-

2000) to the Supreme Court of the Republika Srpska.

59. It appears that the remaining administrative dispute proceedings initiated by the Higher Business School against the two procedural decisions issued by the Ministry of Education, acting in the second instance on 12 May 2000, are still pending before the Supreme Court of the Republika Srpska.

C. Background facts as described in the media and in the public sphere

60. Numerous newspaper articles, of varying credibility, have been published about the events concerning the Higher Business School in Prijedor. The allegations and accusations made in these newspaper articles are impassioned yet contradictory and difficult to follow. On the one hand, the School vehemently insists that it has fully complied with the law. It claims that it is a unique school in the Republika Srpska because it is attempting to promote education reform and to educate its students according to modern, market-based teaching methods and theories. It claims that the Government of the Republika Srpska is obstructing its operations in an effort to maintain complete control over education and to retain all education funds. Moreover, there are allegations of corruption and collusion between the Rector of the Banja Luka University and the interested segments of the Government of the Republika Srpska. On the other hand, the authorities of the Republika Srpska argue that the School cannot provide a proper education to its students and that its facilities are inadequate; consequently, it must, as a public service, ban operation of the School.

61. On 16 October 2001, sixty-four students submitted a letter to Prime Minister Mladen Ivanić complaining about the actions of the Deputy Minister of Education, Mr. Stevo Pašalić, and asking for his dismissal from his position. The students highlight a statement made by Mr. Pašalić which was quoted by *Glas Srpski* on 8 October 2001, as follows: “The Higher Business School in Prijedor is illegal and the diplomas awarded to the graduates at the recent graduation ceremony will not be recognised by the Ministry of Education.” He is further credited as stating that “the School has never obtained the procedural decision on approval for operation from either the Government of the Republika Srpska or the Ministry of Education, and it does not fulfil the elementary conditions for the organisation of studies.” At a later date, *Nezavisne Novine* reported that the Minister of Education, Mr. Gojko Savanović, confirmed these statements.

62. On 24 October 2001, the Minister of Education, Dr. Gojko Savanović, informed the Development and Employment Fund of the Republika Srpska that the decision of 19 April 2000 banning the operation of the Higher Business School is final (*konačno*) and enforceable, and on this basis, the School “does not possess proper authorisation to perform educational activities”. Similar information was provided to the Health Insurance Fund of the Republika Srpska, leading it, on 19 November 2001, to reject the requests of two of its employees for the payment of scholarships to the School.

63. On 14 November 2001, the Department of Economic and Social Affairs of the Derвента Municipality wrote to Svjetlana Brković, a graduate of the Higher Business School, to explain why it refused to register her diploma from the Higher Business School in her employee workbook. It explained that the Ministry of Education had informed it that the School is not on the Register of Schools of the Republika Srpska and that the Ministry did not approve the admission of new students. Further, “the Ministry of Education cannot include this School in the network of higher schools in the Republika Srpska, or acknowledge it as legitimate” until the Supreme Court of the Republika Srpska resolves the pending administrative dispute filed by the Higher Business School.

64. On 14 December 2002, the newspaper *Blic* quoted the Minister of Education, Mr. Gojko Savanović, as saying: “The Higher Business School in Prijedor has definitely been illegal since 2000, although students are still admitted there. Their diplomas will be invalid. Only the diplomas of students who enrolled in this School up to the ban will be valid.”

D. Summary of witness statements

65. As stated above, on 3 February 2003, the Chamber held a public hearing at which eleven witnesses offered statements and answered questions from the members of the Chamber and the parties (see paragraph 20 above). These statements, in relevant part, are summarised as follows:

1. Director and Professors of the Higher Business School

66. Mr. Radmilo Kondić has been the Director of the Higher Business School since its establishment in 1995, and he is also one of its founders. He explained that when the School was granted approval to open by the Ministry of Education, that approval was based upon a feasibility study submitted to the Ministry that envisioned 500 students (see paragraph 26 above).

67. The Higher Business School is a two-year school, composed of four semesters of study. Tuition is 300 KM, plus 50 KM for books. The Higher Business School has its main premises in the Fire Hall, but it also has lease contracts for three other locations where it can hold classes in Prijedor. However, it has not been necessary for the School to use those other premises. None the less, the School pays the rent to maintain the additional lease contracts. Students are admitted once per year. They have 26 hours of classes per week, for 15 weeks per semester, followed by exams. Usually classes are scheduled in two shifts, one in the morning and the other in the afternoon. Attendance is not controlled each day. Mr. Kondić stated, "our classes are of a democratic nature, but a student must fulfil a minimum of 20 classes. We do not make notes whether he was present at every class. He is a student, you know. He can study through computers and books." Mr. Kondić explained that the Higher Business School has both active and passive students. Many registered students are passive. They neither attend class nor take exams. Active students attended class and passed exams. The percentage is "perhaps 40% active and 60% passive". "It has never happened that a student does not have a chair." According to Mr. Kondić, there is no similar school in the Republika Srpska where students could continue studies commenced at the Higher Business School under a comparable syllabus and curriculum.

68. With respect to taxes, the Republika Srpska instituted a tax of 30% on the tuition paid by students of the Higher Business School. There is a dispute pending between the School and the Government over the payment of these taxes. Although the tax on education contained in the Law on Excise and Tax on Trade of the Republika Srpska was revoked, Mr. Kondić stated that the taxes paid were not returned to the Higher Business School.

69. Mr. Zoran Becner is a professor and founder of the Higher Business School. He lectures 8 classes per week to students, as well as consulting and advising on graduation papers. Approximately 80% of registered students attend his classes regularly. For the duration of his time at the Higher Business School, he has never experienced that the capacity of the teaching rooms was too small for the number of students. As he mentors his students and prepares them for their exams, Mr. Becner's students have all passed their graduation exams. With respect to the business form of the Higher Business School, Mr. Becner explained that although he is a "shareholder" of the School, "we do not participate in profit because the School is designed so that there is practically no profit. It is only a matter of the fact that the five of us signed and warranted, together with the other founders, that such form of organisation of education might start. ... The level of education and the expenses incurred in that process did not result in material profit."

70. Mr. Arsenije Radočaj is a professor and founder of the Higher Business School. He teaches first-year courses of Management of Marketing and Economics of Profit, with 8 classes per week. Not all students attend class. "Out of 150 students in total, less than 100, perhaps 80 of them attend, while at the end of the year, sometimes the number is as low as 30-50 students." He has never had any problem with the capacity of the rooms where he teaches. Mr. Radočaj elaborated: "Since 1995, when we were registered, we matched the number of admitted students to the capacity of the classroom where the classes were given. ... There was always some free space. I mentioned in the beginning that more students are present in the beginning while the number reduces at the end because students prepare themselves for exams and must sacrifice something."

2. Students of the Higher Business School

71. Ms. Gordana Popović is a graduated student of the Higher Business School, and she is also the President of the Student Board. She enrolled in the School as a first year student in 1998-99. She graduated in 2000. She never witnessed or experienced any problem with the capacity of the rooms for lectures while she was attending classes. She said, "I did not miss a class in two years. And every time, all the students present had a place to sit." All her regular classes were conducted at the main premises in the Fire Hall in Prijedor.

72. Although Ms. Popović did not try to apply to the Faculty of Economy of the Banja Luka University after operation of the Higher Business School was banned, she knew that other students did try, but they were not successful. When asked why, Ms. Popović explained: "How could they admit them when we had a completely different program here? If we wanted to study at the Faculty of Economy, we would have applied there. Do you understand? This School has a different program. It is the only such school in this region, and that is what attracted us." When asked why she did not apply to transfer, she stated that she lives in Prijedor, and it was easier for her to study there. Moreover, the Higher Business School "was something innovative and more prosperous than a classical faculty of economy".

73. Ms. Popović considers herself to be damaged by the decision of the Ministry of Education banning operation of the Higher Business School. "The order to close the School was passed when I was completing the second year of studies. I think that I would certainly be employed by now, but all the media announced the denial of our diplomas, and, accordingly, I couldn't find a job, so I consider myself damaged." She personally applied to companies and her employment was refused because they did not recognise her diploma or the validity of the School was uncertain. Her diploma was registered in her workbook, but her employment still was not accepted "because the diploma of the Higher Business School is not valid. That's what I was always told; thus, I could waive my workbook around as long as I wanted". To attempt to obtain a remedy for the decision, Ms. Popović said the students addressed the international community and applied to the Chamber. They did not appeal to national institutions in the Republika Srpska because "we didn't trust them".

74. Ms. Dragana Trgić is a graduated student of the Higher Business School. She commenced her studies in 1998 and graduated in 2000. Her diploma is registered in her workbook. However, "since there was a dispute over whether or not the School was recognised" and "since the country was facing a very difficult situation, and, being aware of my economic situation", Ms. Trgić finished the Police Academy in Sarajevo and now works as a policewoman in Tuzla Canton. She stated that when she attended classes at the Higher Business School, the capacity of the classrooms was sufficient for the students. In her estimate, approximately 80% of the students, "those who wanted to study, attended classes".

75. Mr. Radovan Mrkela is a current student of the Higher Business School. He enrolled on 8 August 2001. When he applied for admission to the School, he knew that operation of the School was banned. "I heard about that, but I paid no attention to it. I had my goal, and I didn't want any outside interference with it. My goal was to finish. I consider it to be my democratic right to choose which school to finish. I chose this School, the one I hold prosperous for the present and future." He further stated, "There was enough space for all the students, and no one can deny that. However, students behave differently. There are both active and passive students — those who only apply to the School but are not certain whether or not they want to finish it. Those who intend to finish the School would continue regardless of the circumstances that surround the School's operation and ... those who desire to educate themselves and achieve some affirmation for the future." In his estimation, approximately 50 students presently attend classes in the second year at the Higher Business School, all of which are held in the Fire Hall in Prijedor.

76. Mr. Dalibor Kališ enrolled as a part-time student at the Higher Business School in Gradiška in 1998, when he was in active military service with the Army of the Republika Srpska. He completed the first year of studies in 1998-99 and continued his studies in 2000, but he has not yet graduated. "When the ban was passed, we were misled because we did not know what to do, whether to withdraw from the School, as we learned from the media that we should enrol at the Faculty of Economy in Banja Luka. We were told that we could continue studies there and finish the Higher Business School. I know a number of people who registered there, but no actions were taken in order to really establish a school there." In 2000, Mr. Kališ considered applying to transfer to the Faculty

of Economy in Banja Luka, but he did not do so. "I collected copies of the documents from the Higher Business School in Prijedor, and when I approached the administration workers there [in the Admissions Department in Banja Luka], they told me that there is still no concrete plan when that school will start operating." "I was concretely told that verbally. I don't know the names of the women or girls who worked there. They showed me a whole pile of documents from those students who applied, and they said that they still didn't know what to do with them."

77. Mr. Kališ further explained that as part of the downsizing of the military, he applied for a scholarship to finish his education. The Development and Employment Fund informed him that his application had been approved and he would be awarded a scholarship. However, the following day, he was informed that the scholarship had been stopped due to a letter from the Ministry of Education. He attempted to obtain further information from the Ministry of Education, but he was told that as long as the court proceedings concerning the Higher Business School were pending, they could not provide him with answers.

78. Mr. Goran Arambašić was admitted to the Higher Business School as a part-time student in Prijedor in 2001. The syllabus and curriculum of the School attracted him, and he was unaware of the order banning the operation of the School. On average, approximately 80 students attend classes with him. He has not witnessed a problem with the capacity of the rooms where his lectures were given. "The capacity was sufficient. All the students were sitting, regardless of which classroom we used and which courses were given."

79. Mr. Jugoslav Davidović is a current student of the Higher Business School in Prijedor. He was admitted in 1997, but until 2001 he was only a passive student. He had been a professional soldier, and upon leaving military service, he was entitled to a two-year scholarship to complete his education. He informed the Employment Bureau of his re-registration at the Higher Business School in 2001, but his scholarship was not approved "because, allegedly, the School was not approved", *i.e.*, "not recognised". As a result, he did not continue his studies at the Higher Business School in Prijedor because his scholarship was not approved. He did not apply to transfer to the Faculty of Economy at the Banja Luka University "because the Employment Bureau approved the scholarship for only two years; thus, the Higher School that lasted only two years suited me better".

3. Dean of the Faculty of Economy of the Banja Luka University

80. Mr. Stanko Stanić is the Dean of the Faculty of Economy of the Banja Luka University. Mr. Stanić was asked whether any students from the Higher Business School in Prijedor applied to continue their studies at the Faculty of Economy in accordance with the procedural decision of the Ministry of Education of 16 May 2000 (see paragraphs 48-49 above). He replied:

"About twenty students applied. Namely, when we received the procedural decision of the Ministry of Education, we undertook adequate actions to organise the educational process of our faculty for those students. Those preparations, among other things, included duly informing the students whether they can fulfil their obligations of studies and continue their education at the Faculty of Economy, according to the Minister's procedural decision. The information for the students was on the notice board of the school. We invited them to report to us through the public media and the notice board of the Faculty. We informed them that we are aware of their number and that we can register them only on the grounds of their student books of that Higher School. Only about twenty of them applied to us within the set time period. ... According to that procedural decision, our obligation, which is out of question, was to organise the continuance of their education under the established syllabus and curriculum. The Faculty of Economy is professionally fully capable to undertake that task. However, we did not have enough students to organise that for, because only about twenty of them applied to us, out of the huge number of students admitted to that School. When we received information that the Higher Business School continued its operation, regardless of the procedural decision of the Minister, I spoke to the Minister of Education and notified him about the number of students who had reported to us. I told him that we did not want to make a circus of all this, as would have happened if we had organised studies for some twenty students, while all the others continued with their studies in Prijedor, as if nothing had

happened. Accordingly, we concluded all our obligations, as a state-owned faculty, following the Minister's decision."

81. Mr. Stanić elaborated that "it was understandable to expect that at least a majority of the registered [students of the Higher Business School would] appear, because certainly, among all the registered students, some were enrolled only formally. However, upon expiry of the deadline for reporting, I learned something else. I learned that some other politics was behind all this, which is the politics of the owner of that School, and as a result, the students were discouraged from enrolling at the Faculty of Economy in Banja Luka. Apparently, that's what happened," in his opinion.

82. According to Mr. Stanić, the students of the Higher Business School were given a one-month time period — roughly June 2000 — during which they could apply to transfer to the Faculty of Economy. It was anticipated that students who transferred to the Faculty of Economy would only pay the regular administrative admission fee of 30 KM. "We understood the Minister's procedural decision as our obligation to help those youngsters to stay out of the streets and to enable them to conclude, in a legitimate way, what they started legally."

83. In terms of the curricula of the two schools, according to Mr. Stanić, "there is certainly a great overlap in the curricula of these two institutions. Our curriculum also contains courses as accounting, business finance, business mathematics, statistics, marketing, small businesses, and organisation. Those are the courses I remember from the curriculum of the Prijedor School. Accordingly, there is a great overlap of the courses, *i.e.* the syllabus." However, when asked why then the students of the Higher Business School could not just join the Faculty of Economy, why separate courses would need to be organised only for them, Mr. Stanić elaborated that there is a difference in the depth and detail of the courses taught because the Higher Business School is a two-year institution, while the Faculty of Economy is a four-year institution.

4. Ministry of Education of the Republika Srpska

84. Mr. Vid Ožegović is an Education Inspector for the Ministry of Education of the Republika Srpska. He and Mr. Zlatko Kelečević performed an inspection of the Higher Business School in Prijedor on 5 April 2000 (see paragraph 38 above). "That inspection was a kind of control, and it was a complex one. The control had the purpose of checking whether the School had acted in accordance with the procedural decision of the Ministry which ordered, that is, banned the admission of students for the school year 1999-2000." In the inspection, Mr. Ožegović learned that the Higher Business School had admitted an additional 155 students, regardless of the procedural decision. During the inspection, "no change was noted for the classrooms, the capacity was the same, for 120 students." "The minutes noted that the conditions were not changed." However, during the inspection, he did not personally witness any classes nor observe that there were too many students for the capacity of the rooms.

85. Mr. Ožegović also did not visit or inspect the additional premises under the lease contracts presented to him by the Higher Business School. "We did not visit those three places, the reason for that being the Director's statement that he had concluded lease contracts for these rooms, but he is not using them normally, stating they are not necessary to him, and there was no need to visit those, because he said he was not using them." When asked how he could conclude that the space in the main premises was inadequate when the School informed him that it had arranged three other premises for classes in the event there were too many students for the main premises, Mr. Ožegović responded: "It seems like that [*i.e.*, illogical] to you, but the facts are such. Such space is inadequate under the law. Why the Director didn't use [the additional premises], I cannot get into that."

86. When asked how he determined the disproportion between the size of the premises and the number of students, that is, whether it is regulated by some rule book, Mr. Ožegović responded that Article 7 of the Law on Higher Schools sets forth the basic requirements for operation of a higher school. However, he was unaware "whether there exists a rule book analysing and regulating it in detail". He claimed that the Law places it within the context of how many classes an instructor may teach. "Having considered the number of students and the number of instructors and the classroom space, and when all that is connected, the conclusion is that it's really impossible to realise the curriculum." Mr. Ožegović confirmed that the reasoning of the procedural decision prohibiting the

operation of the Higher Business School was based upon “the failure to meet requirements of space”. This was the “sole reason”. No other irregularities were noted.

87. Mr. Ožegović further confirmed that Education Inspectors are competent to issue procedural decisions. “An Inspector is in charge of issuing procedural decisions once he establishes illegalities in operation and the irregularities in the educational institution which he inspects, and he orders the measures to remove such deficiencies by a procedural decision.” According to Mr. Ožegović, the Inspector who inspected the Higher Business School in May 1999 would have been competent to issue the subsequent procedural decision. However, in the present situation, pursuant to Article 10 of the Law on Higher Schools, “if the school did not remove the deficiencies within the deadline set forth in the procedural decision, then the Ministry takes the procedural decision on prohibition of the Higher Business School, which was done.”

88. Mr. Nenad Suzić, former Minister of Education, was personally invited and summoned to appear at the public hearing, but he failed to do so and offered no explanation for his absence. In addition, the Chamber notes that the respondent Party also did not include him as part of its team. Accordingly, the Chamber will consider any lack of information reasonably expected to have been elicited from him — as the Minister of Education who signed the relevant procedural decisions — against the respondent Party and in favour of the applicants.

IV. RELEVANT LEGAL PROVISIONS

A. Law on Higher Schools of the Republika Srpska

89. The Law on Higher Schools of the Republika Srpska (Official Gazette of the Republika Srpska—hereinafter “OG RS”—nos. 13/94, 19/94 of 20 June 1994) regulates the operation of higher schools. The pertinent Articles for these cases are as follows:

90. Article 6

“For the purpose of realising the rights of the citizens mentioned in Article 5 of this Law [*i.e.*, citizens who are generally interested in higher education], the Government of the Republika Srpska (hereinafter: the Government) shall establish schools.

“The Government shall determine the number, structure and location of schools (hereinafter: the network of schools).

“The network of schools shall also contain study groups.

“A proposal for the establishment of a school shall contain a curriculum and syllabus.

“Other legal or physical persons may establish a school by the act of establishment, in accordance with the law.”

91. Article 7

“A higher school may commence to operate and perform its activities if it has ensured teachers, who are employed on a part-time basis, for all courses determined by the curriculum, premises and equipment.

“A school shall perform its activities in its seat.”

92. Article 9

“The Ministry shall identify whether the conditions for commencement of operation and performance of the school activities, *i.e.*, for the introduction of the new curriculum and syllabus, have been fulfilled.”

93. Article 10

“If the school fails to perform its activities properly, then the Ministry shall designate a time limit, not exceeding one year, for the removal of the irregularities and deficiencies.

“The Ministry shall ban school operation that fails to fulfil the prescribed conditions within the time limit set out in paragraph 1 of this Article. The Ministry shall inform the founder about that.”

94. Article 16

“Classes shall be organised for both full-time and part-time students.

“Classes shall be conducted through lectures, exercises, practical lectures, internships, consultations and other forms of instruction, established by the statute of the school.

“Full-time students are obliged to attend all forms of instruction.

“Forms of instruction that are obligatory for part-time students shall be determined by the statute of the school.”

95. Article 27

“A student is obliged to attend classes regularly and to execute other obligations established by the statute of the school.

“A student may have at least 25 and no more than 30 classes and practices per week.”

96. Article 87

“The provisions of Articles 1-4, paragraph 4 of Article 6, Articles 7-13, Articles 18 and 19, Article 22, Article 44, paragraph 1 of Article 41, Articles 46-63, Articles 64-66, paragraphs 1,2 and 4 of Article 67, Articles 70-79, Article 93 and Article 97 of this Law shall be applied also to schools for which the founder is another legal or physical person.”

B. Law on the Education Inspection Service of the Republika Srpska

97. The Law on the Education Inspection Service of the Republika Srpska (OG RS no. 26/93 of 30 December 1993) regulates the activities of supervision over education and assigns responsibility for such supervision to the Education Inspection Service (Articles 1 and 2). Pertinent Articles of the Law are as follows:

98. Article 1

“The activities of inspection supervision of education in Republika Srpska shall be conducted by the Republic Education Inspection Service constituted within the Ministry of Education, Science and Culture.”

99. Article 2

“The Republic Education Inspection Service shall perform the supervision of the application of laws and other provisions in pre-school, primary, secondary, higher and university education and pupil and student standards, conducted by the pre-school institutions, primary, secondary and higher schools, faculties, academies of art, universities and institutions of pupils’ and students’ standards (hereinafter: education institutions), respectively.”

100. Article 3

“The supervision, set out in Article 2 of this Article, refers to the following:

1. the realisation of compulsory primary education;
2. the fulfilment of conditions for operation of education-pedagogic institutions;
3. the conditions for admission and enrolment in education-pedagogic institutions;
4. the realisation of pedagogic-educational, educational-pedagogic, scientific and artistic operation;
5. the application of proper educational programs, curricula and syllabi;
6. the utilisation of approved study books and other sources of education;
7. the realisation of rights and obligations of pupils and parents, teachers, associates, principals, teachers and associates at universities, rectors, deans and students;
8. the maintenance of records and documents;
9. the application of pedagogic-disciplinary measures against pupils and students;
10. the application of regulations passed by educational institutions on the basis of public authorisation.”

101. Article 4

“Activities within the scope of the competencies of the Republic Education Inspection Service shall be performed by the Republic Education Inspectors sitting in the Ministry of Education, Science and Culture and its regional branches.”

102. Article 5

“In the supervision activities set out in Article 2 of this Law, the Republic Education Inspector shall have the following mandate:

1. to inspect the records and documents kept by education-pedagogic institutions;
2. to collect statements upon the facts relevant for supervision;
3. to temporarily ban the performance of certain actions;
4. to order the application of laws, other regulations and acts passed on the grounds of the law to the education-pedagogic institution;
5. to order the removal of deficiencies incurred by the failure to implement or by the incorrect application of the law, regulations or acts passed on the grounds of the law;
6. to temporarily ban the operation of the education-pedagogic institution in accordance with the law;
7. to maintain a record on inspection supervision conducted and measures taken.”

103. Article 6

“The Republic Education Inspector shall issue a procedural decision ordering certain measures and the time limit for their enforcement.

“A procedural decision issued by the Republic Education Inspector may be subject to a complaint before the Ministry of Education, Science and Culture within 15 days after the date of the receipt of the procedural decision.”

C. Law on State Administration of the Republika Srpska

104. The Law on State Administration (OG RS no. 11/94 of 13 June 1994) in the special provisions on inspection supervision regulates how inspection supervision shall be conducted. Pertinent Articles of the Law are as follows:

105. Article 22

“Inspection supervision shall be conducted by Ministries through an Inspector, i.e. other authorised persons pursuant to the law (hereinafter: the Inspector).

“The Inspector shall directly deal with inspection duties.

“Certain duties of inspection supervision may be lawfully assigned to Municipal and City authorities.”

106. Article 23

“The Inspector shall have the following rights and duties while performing inspection supervision:

- 1) to inspect general and particular acts, evidence and other documentation;
- 2) to hear the responsible and interested persons and take their statements;
- 3) to inspect business premises, facilities, plants, equipment, things and goods;
- 4) to take samples of goods and other things for purposes of analysis, expertise, *etc.*; ...
- 6) to take other measures and actions authorised by law or by decree.

“Business premises within the meaning of paragraph 1 subparagraph 3 of this Article refers to all premises used for business affairs.”

107. Article 24

“Inspectors shall be independent in their work within the boundaries of their competencies determined by law and other provisions. They shall be personally responsible for their work.

“The Inspector shall inform the Minister about any significant infringements upon his independence and any unlawful affect on his work.

“The Inspector shall be particularly responsible for the following:

- 1) if, while conducting supervision, he does not take, order or decide upon the measure for which he is authorised;
- 2) if he does not propose or initiate proceedings before the competent authority for any established unlawfulness, *i.e.* irregularity;
- 3) if he steps beyond the boundaries of his competencies.”

108. Article 25

“The Inspector shall keep a record of every inspection and action carried out. The record shall contain a finding on the current situation and the proposed, *i.e.* ordered, measures.

“The record shall be obligatorily submitted to the company, *i.e.* institution or other organisation or a citizen whose business or actions have been inspected.

“The company, institution or other organisation or citizen mentioned in paragraph 2 of this Article shall inform the Inspector of the measures taken as ordered in the record.

109. Article 26

“The Inspector, within the boundaries of his competence, may:

- 1) issue a procedural decision ordering enforcement of certain measures and actions and determine the time limit required for that;
- 2) impose a mandatory penalty;
- 3) submit to the competent authority a charge for a committed criminal act or economic offence and file a request for initiation of offence proceedings;
- 4) issue provisional orders, *i.e.* a prohibition in accordance with the law;
- 5) issue security measures in case of threat to life and health of people or other public interests;
- 6) inform another authority if there are reasons to take measures under the competence of that authority;
- 7) file an initiative before the competent authority for termination or revocation of provisions or some other general act issued by the authority or organisation performing the tasks of state administration, *i.e.* for the termination of enforcement of a general act issued by the company, institution or other organisation if it is not in accordance with the Constitution and the law;
- 8) take other measures and actions as authorised for by the law or other regulation.”

110. Article 45, with respect to managing the operations of state administration bodies, provides as follows:

“The minister, *i.e.* the official managing a special organisation, shall represent the ministry, *i.e.* the special organisation, organise and provide for the lawful and effective performance of duties, and decide on the rights, duties, and responsibilities of employees.

“The minister, *i.e.* the official managing a special organisation, shall be responsible for the performance of his/her entrusted duty, as well as for the operation of the ministry, *i.e.* the special organisation.”

D. Law on General Administrative Procedure of the former Socialist Federal Republic of Yugoslavia

111. With respect to annulment and revocation of the right of supervision, the Law on General Administrative Procedure of the former Socialist Federal Republic of Yugoslavia (Official Gazette of the Socialist Federal Republic of Yugoslavia no. 47/86) provides as follows.

112. Article 263

“(1) Upon the right of supervision, the competent body shall annul a procedural decision which is final in administrative proceedings:

1. if the procedural decision was issued by an actually incompetent body, excluding the case set out in Article 267 subparagraph 1 of this Law;
2. if a valid procedural decision deciding differently upon the same administrative matter was previously issued;
3. if the procedural decision was issued by one body without the consent, approval or opinion of another body when such is required by the law or another provision based upon the law;
4. if the procedural decision was issued by a territorially incompetent body;
5. if the procedural decision was issued as a result of coercion, extortion, blackmail, pressure or other illegal acts.

“(2) An administrative decision which is final in administrative proceedings may be revoked upon the right of supervision if it manifestly violates the substantive law. In matters involving two or more interested parties with opposite interests, the procedural decision may be revoked only if the interested parties agree.

“(3) If an administrative body is competent for the issuance of such a procedural decision when the procedural decision was issued by the assembly of the political-social community or its executive body, such procedural decision may be annulled on the grounds of the provisions of paragraph 1 subparagraph 1 of this Article because it has not been issued by the competent body.”

113. Article 264

“(1) The second instance body may annul or revoke the procedural decision upon the right of supervision. If a second instance body does not exist, then the procedural decision may be annulled or revoked by the body authorised by law to supervise the body that issued the procedural decision.

“(2) The competent body shall issue a procedural decision on annulment of a procedural decision *ex officio*, upon the request of a party, a public prosecutor or a public attorney of self-management, while a procedural decision on revocation shall be issued *ex officio*, upon request of a party, a public prosecutor or a public attorney of self-management.

“(3) A procedural decision on annulment, on the grounds of subparagraphs 1, 2 and 3 of paragraph 1, Article 263 of this Law may be issued within five years, while on the grounds of

subparagraph 4 paragraph 1 of that Article, it may be issued within one year after the date the procedural decision became final in administrative proceedings. A procedural decision on revocation on the grounds of paragraph 2 Article 263 of this Law may be issued within one year after the date when the procedural decision became final in administrative proceedings.

“(4) A procedural decision on annulment of a procedural decision on the grounds of Article 263 paragraph 1 subparagraph 5 of this Law may be issued regardless of the time limits determined in paragraph 3 of this Article.

“(5) A procedural decision issued on the grounds of Article 263 of this Law allows for no appeal, but an administrative dispute may be initiated against it.”

V. COMPLAINTS

A. Case no. CH/00/6183 Dušanka BILBIJA and Others v. the Republika Srpska

114. In her application, the applicant Bilbija alleges that through a pattern of illegal actions and implicit corruption, the Minister of Education of the Republika Srpska has violated the right of her student Vladimir Trkulja (and potentially 3200 other students) to education, as guaranteed by Article 2 to Protocol No. 1 of the Convention. The application further appears to raise issues under Article 6 (right to a court) and Article 13 (right to an effective remedy) with respect to the students' rights. The applicant Bilbija also alleges on her own behalf that she is one of the initial founders of and a financial contributor to the Higher Business School, and as such her right to property protected by Article 1 of Protocol No. 1 to the Convention has been violated.

115. On 13 November 2000, in response to an inquiry from the Chamber, the applicant Bilbija clarified that pursuant to an Agreement on joint actions for the protection of students' human rights, she filed her application on behalf of Vladimir Trkulja (later supplemented to include four other students — Gordana Stević, Ljubica Bajilo, Goran Kovrlija, and Maja Mandić, who provided authorisation letters). The Agreement is dated 23 May 2000 and signed by Gordana Popović, on behalf of the Student Board, and 12 professors of the Higher Business School, including Dušanka Bilbija and Slavica Utješanović (the representative of Stjepan Pepić). The applicant Bilbija requested the Chamber to consider her “application as filed on behalf of one student and many other students who are the victims of a violation of the right to education”. She further alleged that she was a victim of a violation of her right to property because she is one of the initial founders of and a financial contributor to the Higher Business School.

B. Case no. CH/00/6231 Stjepan PEPIĆ v. the Republika Srpska

116. In his application, the applicant Pepić alleges that through a pattern of illegal actions and implicit corruption, the Minister of Education of the Republika Srpska has violated his right to education, as guaranteed by Article 2 to Protocol No. 1 of the Convention. In addition, he alleges that he has been discriminated against with respect to his right to education because private education is on an unequal position with state education, in particular with respect to taxes owed only by private schools. With no explanation, the applicant also alleges a violation of his “right to private property”, presumably as guaranteed by Article 1 of Protocol No. 1 to the Convention. The application further appears to raise issues under Article 6 (right to a court) and Article 13 (right to an effective remedy).

117. In the submission of 23 September 2002, the authorised representative of the applicant Pepić clarified that all the students of the Higher Business School in Prijedor are victims of the continuous violation of the human right to education.

VI. SUBMISSIONS AND ARGUMENTS OF THE PARTIES

A. The respondent Party

1. Written submissions

118. In its submissions of 24 January 2002, the respondent Party considers both applications to be inadmissible. With respect to the Bilbija application, the respondent Party points out the lack of an authorisation letter from the alleged student victim. Without such a letter, the respondent Party considers that the applicant Bilbija cannot represent the student's right to education in her application, and the application is therefore incompatible *ratione personae* with the Agreement. Moreover, the respondent Party argues that effective domestic remedies have not been exhausted in either application because the administrative disputes filed by the Higher Business School against the decisions of the Ministry of Education are still pending before the Supreme Court of the Republika Srpska. Therefore, both applications are premature.

119. The respondent Party also considers that both applications are ill-founded on the merits. With respect to the right to education, the respondent Party argues that while the state cannot interfere with the manner in which a person chooses to exercise his right to education, the state is not obliged to provide particular types of educational opportunities. Moreover, the right to education primarily relates to primary or grammar school education. In this case, the respondent Party notes that the Ministry of Education issued the disputed procedural decisions because the Higher Business School failed to fulfil legally prescribed conditions for operating as a higher school. None the less, the procedural decision prohibiting the work of the Higher Business School has not become effective because the administrative dispute is still pending before the Supreme Court of the Republika Srpska. As a result, according to the respondent Party, the School continues to operate, students may continue their studies, and there has been no change to the labour status of the applicant Bilbija since 9 November 2000.

120. On 23 September 2002, in response to the Chamber's inquiry of 11 September 2002, the respondent Party stated that operation of the Higher Business School has been banned. Considering that an administrative dispute is pending before the Supreme Court of the Republika Srpska, "the status of the diplomas of the Higher Business School in Prijedor depends on the outcome of the Court's judgment".

121. In its submission of 23 September 2002, the respondent Party enclosed further information provided by Mr. Vid Ožegović, the Education Inspector of the Ministry of Education of the Republika Srpska in Banja Luka. The Inspector outlined the proceedings concerning operation of the Higher Business School. He noted that on 22 August 2002, the Ministry submitted a proposal to the Supreme Court to reject the lawsuit filed by the Higher Business School against the procedural decision of 19 April 2000 (no. 6-01-953/2000)³ as impermissible "since it was filed against a first instance procedural decision issued in administrative proceedings, against which an administrative dispute cannot be initiated". The Inspector stated that the Ministry had initiated criminal proceedings against Radmilo Kondić, the Director of the Higher Business School, due to his admittance of 155 full-time and 506 part-time students for the 1999-2000 school year, even though the ban on admission of students was in effect. In addition, the Education Inspection Service of the Republika Srpska requested that the First Instance Petty Offence Court in Prijedor initiate petty offence proceedings against the Director and the School due to their refusal to allow an inspection of the School's operations on 29 May 2000. The Inspector opined that, in banning operation of the Higher Business School, the Ministry of Education "acted according to and within the boundaries of its legally prescribed authority". The Inspector further observed that "the question of the legal validity of the diplomas issued to the students during the ban of the School's operations will depend upon the decision of the Supreme Court of the Republika Srpska, *i.e.*, whether their lawsuit will be sustained or rejected as ill-founded".

2. Oral arguments at the public hearing

122. At the public hearing on 3 February 2003, the respondent Party reiterated its objection to the Bilbija application insofar as the authorisation letters from the four students are invalid because they

³ The Chamber notes that these comments refer to only one of four administrative disputes filed by the Higher Business School before the Supreme Court, four of which were pending at the time of the comments and two of which remain pending at the present time.

have not been verified, as required by domestic law. Moreover, it noted that the applicant Bilbija refers only to herself and fails to make arguments on behalf of the students she allegedly represents in her application. The respondent Party further complained because the subject matter of the applications appears to have been extended beyond Article 2 of Protocol No. 1 to Article 1 of Protocol No. 1, Article 13, and discrimination.

123. The respondent Party elaborated upon its position with respect to Article 2 of Protocol No. 1 at the public hearing, as follows: “In the respondent Party’s opinion, the bottom line of this case refers to the Chamber’s review of the decisions by the Ministry of the respondent Party, *i.e.* the lawfulness of the decision on the prohibition of the School’s operation”. However, it emphasised that according to the jurisprudence of the Chamber and the European Court of Human Rights, the Chamber “cannot question the domestic law, and it cannot be a ‘supreme, highest court’ beyond the legal system of the internal law”. Whether there were “legal anomalies” in the actions of the competent persons of the Ministry, “that is, according to the respondent Party, a matter for the judiciary of the Republika Srpska to solve — not the Human Rights Chamber”.

124. In analysing the precise provisions of Article 2 of Protocol No. 1, the respondent Party noted that paragraph 1 uses “negative terminology”, “no person shall be denied...”, which contrasts the “positive terminology” used elsewhere in the Convention, “everyone has the right...”. “Such a formulation, it is not about different wording but different essence. It denotes that the State, I repeat, shall not negate the rights at issue. The consequence of this is very significant for this process, that the individual, the plaintiff, bears the burden of proof.” In accordance with the *Belgian Linguistics* case, States are not required to organise any specific system of education, but rather, they should “secure the right to use the existing forms of education, *i.e.*, the right to access to an educational institution” for the persons within their jurisdiction. “So, inherently, the right to education demands state regulation.” In this case, the respondent Party “possessed the right to interfere with the operation of this private school, and it did not in any way deny the applicants’ right to education”.

125. The respondent Party confirmed that none of the procedural decisions at issue in the present cases were issued in the first instance by the Education Inspectors; they were issued in the first instance by the Ministry of Education. According to the respondent Party, the procedural decision of 23 July 1999, for example, was issued by the Ministry because, “simply, the Inspection Service failed to do that, and the Minister, in order to protect the lawfulness, found grounds in Article 10 of the Law on Higher Schools”. The Ministry was competent to issue the procedural decision on the basis of such Article. However, the respondent Party admitted, “it is not normal for the Minister to act in both the first and the second instance. That’s not customary.” None the less, the protection of legality was provided by the right to initiate in the third instance an administrative dispute before the Supreme Court against the decision.

B. The applicant Dušanka Bilbija

1. Written submissions

126. In her submission of 13 November 2000, with respect to exhaustion of effective domestic remedies, the applicant Bilbija states that she has not initiated any disputes before the local authorities because she “has no legal right to do that”; rather, the School has initiated such disputes. “Neither the students nor [the applicant] could have contested the procedural decisions issued by the Minister of Education” and “all political attempts to resolve the dispute failed due to obstruction by the Government of the Republika Srpska and public authorities”. The applicant Bilbija further states that “there are no regulations in the Republika Srpska upon which the students or [she] could sue that body and seek the annulment of those [disputed] procedural decisions and the protection of [their] rights”.

127. In her submission of 4 January 2001, the applicant Bilbija alleges that “there is a conspiracy of the Ministers of the Republika Srpska against the Higher Business School” which has led to the disputed procedural decisions prohibiting the work of the School and annulling the admission of students. The applicant also alleges that “the work of the school has been constantly interrupted and its funds have been blocked” contrary to the domestic law. In her submission of 11 February

2002, the applicant Bilbija elaborates that the Higher Business School has paid all its obligatory fees to the Government, including rental costs for its facilities calculated as if they were a “café bar in the city centre”. Moreover, the Republika Srpska introduced a tax on tuition, which is 300 KM per student, solely for students of this School (which was later revoked).

128. The applicant Bilbija confirms that despite external pressures, “the School still works and educates students” both from the Federation of Bosnia and Herzegovina and from the Republika Srpska. However, “the School functions under constant, systemic, and intentional pressure from public bodies and the Rector of the Banja Luka University, which imposes terror over the human rights—the right to education—at the private school”. The applicant alleges that students have been threatened and intimidated by public officials.

2. Oral argument at the public hearing

129. At the public hearing, the applicant Bilbija elaborated upon her allegations of violations of Articles 1 and 2 of Protocol No. 1 to the Convention, as follows:

“As a physical person and one of the founders of the Higher Business School in Prijedor, I have been deprived of my right to the peaceful enjoyment of possessions, as well as of my ownership rights, which I obtained by means of honest work in the aforementioned school. At the same time, the students have been denied their right to education because the respondent Party did not respect the right of the students of business education to continue the education and, in addition, in an unlawful and impermissible manner, it denied my right to work and to use my possessions. At the time when the Ministry of Education of Republika Srpska passed the ban on the School’s operation and terminated the studies of the students of the Higher Business School, it committed a violation of human rights because me and my students, as directly injured parties in the dispute between the Ministry of Education of the Republika Srpska and the Higher Business School, did not have a right to an effective remedy before the state bodies”

According to the applicant Bilbija, the Ministry of Education intentionally “planned to destroy ... the Higher Business School and to preclude the development of the non-governmental sector” in education.

130. With respect to the allegedly discriminatory Law on Excise and Tax on Trade of the Republika Srpska, which was later revoked but for some time taxed educational services not funded from the budget of the Republika Srpska, the applicant Bilbija highlighted that the Higher Business School was the only educational institution negatively affected by this Law, as it is the only private educational institution in the Republika Srpska. “That act was a discriminatory act aimed to destroy the School’s possessions and a part of my possessions, *i.e.* my implicit income.” As a result of this Law, the School paid 4,000 KM to the Financial Police. The applicant further alleged that the Prijedor Municipality owes the Higher Business School 50,000 KM, which it illegally removed from the School’s account on 23 April 2000. Similarly, around the same time, “Prijedorska banka A.D. Prijedor” blocked 32,500 KM in the School’s account. These all constitute part of the applicant’s pecuniary possessions that she claimed have been unlawfully interfered with.

131. When asked for specific factual details concerning the four students who authorised Mrs. Bilbija to represent them, Mrs. Bilbija responded that she had no information about them.

132. The applicant Bilbija confirmed at the public hearing that she invested money in the Higher Business School in the amount of approximately 1000 KM: “not a large amount of money, ... it’s almost nothing, without importance”. She was the only private founder of the School, other than the Local Community “Prijedor Centre”, to invest money in the School. However, she does not think she owns capital or shares in the School. She stated that after she invested, “I didn’t count on that money anymore.”

C. The applicant Stjepan Pepić

1. Written submissions

133. With respect to exhaustion of effective domestic remedies, the applicant Pepić, in his submission of 15 February 2002, argues that legally and factually he has no opportunity to challenge the arbitrary actions of the respondent Party which deprive him of his right to education. “Formally and legally that protection may be asserted only by the Higher Business School in Prijedor, as an institution and a legal entity”. He claims that the disputed procedural decisions “contain no clause stating that they have decided upon the right to education of any student; thus, ... [he] and other students of the Higher Business School in Prijedor have no right to file either a complaint or lawsuit in administrative proceedings against such acts”. Similarly, the administrative dispute highlighted by the respondent Party was initiated by the Higher Business School, “which had the sole right to initiate it”, but “the subject of that dispute is not the right to education of the applicant, nor is he a party to that dispute”. Moreover, the applicant argues that taking into consideration that the Supreme Court of the Republika Srpska has not made any decisions in the 20 months following the initiation of the administrative dispute, it is not reasonable to expect it to act on the dispute before the new Law on the University of the Republika Srpska enters into force. According to the applicant, “that Law will have the exclusive purpose of terminating, by law this time, the only non-public higher school in the Republika Srpska, namely, the Higher Business School”. The applicant submits that private education “is not favourable in the Republika Srpska” and the Faculty of Economy at the Banja Luka University has a completely different educational program than the Higher Business School.

134. The applicant Pepić states that the respondent Party’s statement that “the students may carry out their studies uninterrupted” is untruthful and misleading. To the contrary, the students of the Higher Business School are being discriminated against in their right to education “only because they study at this non-public school”. “The applicant asks nothing else but to have his right to education protected and to use the means for obtaining knowledge present in the Republika Srpska,” without discrimination from the respondent Party or a monopoly by the Banja Luka University on the entire system of higher education in the Republika Srpska.

135. On 23 September 2002 the authorised representative of the applicant Pepić responded to the Chamber’s inquiry of 11 September 2002. She clarifies that the applicant Pepić is presently a second-year student at the Higher Business School. She explains that “all the students of the Higher Business School in Prijedor, not only Stjepan Pepić, are the victims of the continuous violation of their human right to choose the school where they want to be educated for the occupation they desire”. The applicant Pepić and other students remain “under constant fear of actions by the Ministry of Education in relation to the enjoyment of their rights after their graduation and during their studies”. “The intent of the Ministry of Education is not to recognise all the diplomas, including Stjepan Pepić’s future diploma, thereby depriving all the students of the rights asserted through graduation”.

136. More specifically, the authorised representative claims that the procedural decision issued by the Ministry of Education prohibiting operation of the School was illegal; none the less, the Ministry attempted to coercively execute the decision prior to it becoming valid and effective. “The illegal procedure was halted only after the OHR and IPTF intervened”. Thereafter, she alleges that the Ministry of Education “initiated a media campaign ... in which the public was informed that operation of the Higher Business School in Prijedor is prohibited, that it continues to operate illegally, that the diplomas will not be recognised for any students, and that future admissions, exams and other affairs of the School are illegal”. This media campaign resulted in “a significant decrease in newly-admitted students”. In addition, the authorised representative claims that “the Faculties of Economy of the Republika Srpska have been instructed not to admit the graduates of the Higher Business School in Prijedor to complete their studies and to achieve a bachelor’s degree. In addition, the Municipalities in the Republika Srpska were ordered by the Ministry of Education not to register the data about the degree and title achieved through diplomas of the Higher Business School in the Employee Record Booklets”.

2. Oral argument at the public hearing

137. At the public hearing, the representative Utješanović contended that the authorities of the respondent Party have violated the applicant Pepić’s right to education. “Since mid 1999, we have witnessed the systematic violation of one of the inalienable human rights, namely the right to education, in various forms of discrimination of students of the non-governmental Higher Business

School of Industrial Engineering, Organisation and Management in Prijedor. ... The strategy of systematic discrimination of the students of the aforementioned school follows two parallel tracks, and both of them have the common aim in the use of public offices, often referred to as misuse of position and authority.”

138. Firstly, the representative Utješanović highlighted the unlawful procedural decisions issued by the Ministry of Education in April and May 2000 banning the operation of the Higher Business School and prohibiting the admission of students. Then the officials and the police attempted to forcibly seize all documents related to students and operations of the School, so as to “prevent citizens to study at this School”. However, the OHR and IPTF intervened and prevented this. Thereafter, the authorities “carried on with the discrimination of the students by the means of misuse of public media, which disseminated lies that the Higher Business School was illegally founded, that its diplomas were not legally recognised, and so on. Besides the public, letters were sent to some institutions, advising them not to verify the medical books of the students of the Higher Business School in Prijedor and informing them that the level of education obtained at this School could not be registered in the workbooks, that the professional re-direction of the former members of the Army of Republika Srpska at this School could not be financed, that the graduates of this School could not continue studies on any other faculty in the Republika Srpska, etc.,.”

139. Secondly, the representative Utješanović highlighted that each year, the School has been the subject of education inspections carried out on the basis of the Law on Education Inspection Service. Under this Law, the education inspector is competent to issue in the first instance a procedural decision “ordering the correction of deficiencies that are the result of non-compliance with or incorrect application of the Law and similar things, if he finds such deficiencies during the control”. Such procedural decisions may be appealed to the Ministry of Education in the second instance. However, according to Mrs. Utješanović:

“Since 1995 to date, not one education inspector, upon the conclusion of the control, issued any procedural decision ordering the correction of deficiencies in the operation of the Higher Business School in Prijedor for the plain reason that no such deficiencies in the application of the Law existed. It is common and indisputable knowledge that the Minister of Education, Mr. Nenad Suzić, ordered the inspectors to note in the record some breach of the Law committed by the Higher Business School in Prijedor, at all costs, and then to issue the procedural decision banning its operation. Since inspectors did not agree to act contrary to their professional ethics and to invent non-existing breaches of the Law and to issue apparently unlawful procedural decisions. Instead of the competent education inspectors, Mr. Nenad Suzić issued such procedural decisions, albeit being completely unauthorised to do that.”

140. In response to a question for specific factual details concerning the applicant Pepić, Mrs. Utješanović responded: “Stjepan Pepić was the last student admitted in 1999 to our School and we admitted him because the Minister, i.e. the Ministry, approved it, although the deadline for admissions had passed.”

141. According to Mrs. Utješanović, the applicant Pepić and other students of the Higher Business School in Prijedor have “no legal opportunity before the institutions of the Republika Srpska to protect their civil right to education upon their own choice”. She asked the Chamber to enable the students to realise their rights, to declare that the Republika Srpska has violated its obligation under the Agreement to provide all persons under its jurisdiction the enjoyment of the right to education without discrimination, to annul the procedural decisions issued by the Ministry of Education of the Republika Srpska against the Higher Business School, and “to prevent the future issuance of unlawful procedural decisions regarding the Higher Business School in Prijedor on the ban of admissions, non-recognition of diplomas, and similar activities.”

VII. OPINION OF THE CHAMBER

A. Admissibility

142. Before considering the merits of these applications, the Chamber must decide whether to accept them, taking into account the admissibility criteria set forth in Article VIII(2) of the Agreement. In accordance with Article VIII(2) of the Agreement, “the Chamber shall decide which applications to accept.... In so doing, the Chamber shall take into account the following criteria: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted ... (c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition.”

1. Exhaustion of effective remedies

143. The respondent Party objects to the admissibility of both applications on the grounds that the applicants have failed to exhaust the effective domestic remedies. In particular, the respondent Party contends that the applications are premature because administrative disputes filed by the Higher Business School against the decisions of the Ministry of Education are still pending before the Supreme Court of the Republika Srpska.

144. In *Blentić* (case no. CH/96/17, decision on admissibility and merits of 5 November 1997, paragraphs 19-21, Decisions on Admissibility and Merits 1996-1997), the Chamber considered this admissibility criterion in light of the corresponding requirement to exhaust domestic remedies in the former Article 26 of the Convention (now Article 35(1) of the Convention). The European Court of Human Rights (the “European Court”) has found that such remedies must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. The Court has, moreover, considered that in applying the rule on exhaustion, it is necessary to take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned, but also of the general legal and political context in which they operate, as well as of the personal circumstances of the applicants. In previous cases the Chamber has held that the burden of proof is on the respondent Party to satisfy the Chamber that there was a remedy available to the applicants both in theory and in practice (see, e.g., case no. CH/96/21, *Čegar*, decision on admissibility of 11 April 1997, paragraph 12, Decisions March 1996-December 1997).

145. The Chamber notes that the procedural decisions of the Ministry of Education (of 23 July 1999 prohibiting the admissions of students, of 14 April 2000 annulling the admission of students, and of 19 April 2000 prohibiting the work of the School) were directed against and submitted to the Higher Business School in Prijedor. The procedural decisions nowhere state that the students or other interested parties have the right to file an appeal against them. Moreover, an appeal/complaint against these decisions had no suspensive effect, and thus would have been of no assistance to the applicants.

146. The respondent Party has identified as the “effective remedy” only the administrative disputes filed by the Higher Business School against the procedural decisions of the Ministry of Education. It has not identified any other possible remedy that could have been or should have been exhausted by the applicants. In any event, applying the above principles, the Chamber firstly notes that the administrative disputes to which the respondent Party refers were initiated by the Higher Business School in May 2000. On 13 November and 18 December 2002, the Supreme Court of the Republika Srpska finally ruled on two of the administrative disputes, rejecting them as impermissible (see paragraphs 56-57 above). The two remaining administrative disputes initiated by the Higher Business School are still pending, more than three years after they were filed (see paragraph 59 above). Such a long period of delay, in the Chamber’s view, renders this domestic remedy, if indeed it can even be considered a remedy for the applicants, ineffective in the present applications for the purposes of Article VIII(2)(a) of the Agreement.

147. Taking these facts into account, the Chamber concludes that the applicants have exhausted available effective domestic remedies, within the meaning of Article VIII(2)(a) of the Agreement.

2. Discrimination claims

148. Both applications allege discrimination in relation to the right to education. They claim that private education is on an unequal position with state education, in particular with respect to taxes owed only by private schools, as a result of the Law on Excise and Tax on Trade of the Republika

Srpska. However, the Chamber recalls that after the applications were filed, the Assembly of the Republika Srpska adopted amendments to the Law on Excise and Tax on Trade, which revoked the tax on education applicable to privately-funded institutions (see paragraph 53 above). Therefore, the Chamber finds that the applications do not disclose any appearance of discrimination contrary to the Agreement. It follows that the applications are manifestly ill-founded, within the meaning of Article VIII(2)(c) of the Agreement, with respect to the allegations of discrimination. The Chamber therefore decides to declare this part of both applications inadmissible.

3. Case no. CH/00/6183, Bilbija and Others application

a. With respect to violations of the human rights of students of the Higher Business School

149. In accordance with Article VIII(1) of the Agreement, the jurisdiction of the Chamber extends to applications filed directly by or on behalf of an applicant claiming to be the victim of an alleged or apparent violation of human rights. For applications not filed directly by the victim, Rule 32(2) of the Chamber's Rules of Procedure provides that "applicants may appoint and be represented in the proceedings before the Chamber by attorneys or other representatives of their choice". Rule 45(3) further provides that "where applicants are represented in accordance with paragraph 2 of Rule 32, a power of attorney or written authorisation shall be supplied by their representative or representatives".

150. The Chamber notes that although Mrs. Bilbija filed her application in part on behalf of students of the Higher Business School in relation to the alleged violation of their rights to education and related human rights, it was not until 23 September 2002, after inquiries and warnings by the Chamber, that she submitted written authorisation letters to represent any such individual students (see paragraphs 11-13 above). She submitted no authorisation letter to represent Vladimir Trkulja, identified as the alleged victim in the application; therefore, the Chamber cannot consider him as an applicant. On 23 September 2002, she submitted authorisation letters to represent Gordana Stević, Ljubica Bajilo, Goran Kovrija, and Maja Mandić. At the public hearing, the respondent Party objected to these authorisation letters as lacking proper verification. Regardless, the fact remains that in the extensive case file before the Chamber, there is no evidence about the specific circumstances of the four students who submitted written letters authorising Mrs. Bilbija to represent them before the Chamber. When asked at the public hearing to provide such specific factual details concerning the four students, Mrs. Bilbija responded that she had no information about them (see paragraph 131 above). In addition, the Chamber was unable to find the names of these four students on the list of graduates of the Higher Business School. Therefore, the Chamber does not know, for example, when these four students were admitted to the Higher Business School, whether they are active or passive students, whether they have graduated, whether their diplomas have been recognised, or how specifically they have been injured in their right to education or any other human rights.

151. The Chamber observes that the case file does contain evidence which could support claims on behalf of other students of the Higher Business School for alleged violations of their right to education, in particular some of those students who offered testimony at the public hearing. However, these students did not authorise Mrs. Bilbija or anyone else to represent them, nor did they submit an application to the Chamber. Accordingly, *vis-à-vis* the four students who authorised Mrs. Bilbija to represent them, the allegations of violations of their right to education and related human rights remain wholly unsubstantiated in the record before the Chamber.

152. Therefore, the Chamber finds that the Bilbija application does not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement in relation to Article 2 of Protocol No. 1 and other related human rights on behalf of the four students who submitted authorisation letters. It follows that this part of the application is manifestly ill-founded, within the meaning of Article VIII(2)(c) of the Agreement. The Chamber therefore decides to declare the Bilbija application inadmissible in relation to all claims on behalf of the four students of the Higher Business School who submitted authorisation letters.

b. With respect to violations on her own behalf as a founder of and financial contributor to the Higher Business School

153. The Chamber notes that Mrs. Bilbija also claims that she herself is a victim of a violation of her right to peaceful enjoyment of her possessions, as protected by Article 1 of Protocol No. 1 to the Convention, in that she is one of the initial founders of and a financial contributor to the Higher Business School in Prijedor. By issuing the procedural decisions banning the operations of the School and annulling the admission of students, she contends that the Ministry of Education unlawfully interfered with her right to use her possessions. Moreover, she alleges that the authorities of the respondent Party committed various acts that unlawfully interfered with her pecuniary interests in the Higher Business School (*i.e.*, levying a tax on tuition of the School, removing funds from the School's account, and blocking funds from the School's account) (see paragraph 130 above). Although the applicant Bilbija was directly injured by these acts, she states she had no effective remedy to challenge them, thereby also resulting in a violation of her right protected by Article 13 of the Convention.

154. The Higher Business School was registered with the Court of First Instance in Banja Luka on 31 July 1995, but the form of the enterprise is not specified in the registration documents. It is an educational institution with mixed ownership between the Local Community "Prijedor Centre", a public body, and the five private individual founders, including the applicant Bilbija. Its founders accepted responsibility and warranted the School, as is shown by its "sa p.o." status. However, the School does not appear comparable to a shareholder company. At the public hearing the applicant Bilbija stated that she did not think she owned capital or shares in the School. She further stated that she did not plan to have her investment in the School returned to her. She referred to her investment of 1000 KM as "not a large amount of money, ... it's almost nothing, without importance" (see paragraph 132 above). Mr. Becner, another founder and professor of the Higher Business School, explained that the founders do not participate in profits because "the School is designed so that there is practically no profit" (see paragraph 69 above). None the less, it is clear from the record before the Chamber that as a founder, guarantor, and instructor of the School, the applicant Bilbija has contributed to the development of the student body and to the goodwill of the School since its establishment in 1995.

155. The Chamber recalls that a wide variety of tangible and intangible assets may fall within the scope of "possessions" protected by Article 1 of Protocol No. 1, including a company share with economic value (Eur. Commission HR, *Bramelid and Malmström v. Sweden*, nos. 8588/79 and 8589/79, decision on admissibility of 12 October 1982, Decisions and Reports 29, page 64, at page 81, paragraph 1(b)). The decisive characteristic of such intangible assets is their economic value, but in this case, the applicant Bilbija has not established that she owns any shares of economic value in the Higher Business School.

156. The European Court has, however, further recognised that the value of goodwill of a business may constitute a protected "possession" within the meaning of Article 1 of Protocol No. 1. In *Van Marle and Others v. Netherlands*, the applicants had practiced as accountants for many years. Then, the Government enacted laws designed to regulate the profession of accounting, and the applicants' applications to be registered as certified accountants under the new laws were rejected (Eur. Court HR, judgment of 26 June 1986, Series A no. 101, paragraphs 10-11). The applicants argued that as a result, "their income and the value of the goodwill in their accountancy practices had diminished" and there was an interference with their right to peaceful enjoyment of their possessions (*id.* at paragraph 39). Although it found no breach of Article 1 of Protocol No. 1, the European Court agreed that the applicants' claims concerned protected possessions and that those protected possessions had been interfered with, explaining as follows:

"[T]he right relied upon by the applicants may be likened to the right of property embodied in Article 1: by dint of their own work, the applicants had built up a clientèle; this had in many respects the nature of a private right and constituted an asset and, hence, a possession within the meaning of the first sentence of Article 1. ... The refusal to register the applicants as certified accountants radically affected the conditions of their professional activities and the scope of those activities was reduced. Their income fell, as did the value of their clientèle

and, more generally, their business. Consequently, there was interference with their right to the peaceful enjoyment of their possessions (*id.* at paragraphs 41-42).”

157. Similarly, the European Court has found that the “economic interests connected with” running a restaurant may be protected possessions (Eur. Court HR, *Tre Traktörer AB v. Sweden*, judgment of 7 July 1989, Series A no. 159, paragraph 53), as well as the clientèle of a cinema (Eur. Court HR, *Iatridis v. Greece*, judgment of 25 March 1999, Reports of Judgments and Decisions 1999-II, paragraphs 54-55). In *Tre Traktörer AB*, the applicant was the company, *i.e.* the restaurant. But in *Iatridis*, the applicant leased and operated the cinema in question. A dispute over ownership of the cinema had been ongoing for many years between the State and the purported owners, who had leased the cinema to the applicant. The European Court recognised that ownership of the land and validity of the lease were questions for the national courts. None the less, the European Court observed that, “before the applicant was evicted, he had operated the cinema for eleven years under a formally valid lease without any interference by the authorities ..., as a result of which he had built up a clientèle that constituted an asset; in this connection, the Court takes into account the role played in local cultural life by open-air cinemas in Greece and to the fact that the clientèle of such a cinema is made up of mainly local residents” (*id.* at paragraph 54 (citing *Van Marle and Others* at paragraph 41)). Therefore, in *Iatridis*, the European Court found that there was an interference with the applicant’s property rights (*id.* at paragraph 45).

158. Applying the foregoing principles to the facts of the Bilbija application, the Chamber finds that the applicant Bilbija has not established that she has a protected “possession” in her investment of 1000 KM in the Higher Business School. Her investment cannot be likened to the purchase of shares in a company, the economic value of which she hoped to improve upon through successful business activities. In fact, her testimony at the public hearing established precisely the opposite. Conversely, the Chamber does find it established that the applicant Bilbija has a protected “possession” in the goodwill associated with the functioning of the Higher Business School. In the four years prior to the issuance of the Ministry of Education’s first procedural decision of 23 July 1999 against the interests of the Higher Business School, the School developed a large student body and a reputation in the Republika Srpska as the only private institution teaching business and management under a unique and innovative curriculum. As a founder and guarantor of that School, the goodwill of the School constituted a valuable asset to the applicant Bilbija.

159. Therefore, the Chamber finds that the Bilbija application, insofar as it alleges a violation of her peaceful enjoyment of the goodwill of the Higher Business School, is admissible. The related claims concerning the right to a court and to an effective remedy in the protection of such right are also admissible. However, the remainder of the application does not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement, in particular in relation to the allegations of unlawful actions by the authorities of the Republika Srpska that have interfered with the applicant Bilbija’s pecuniary interest in the Higher Business School. It follows that this part of the application is manifestly ill-founded, within the meaning of Article VIII(2)(c) of the Agreement. The Chamber therefore decides to declare this part of the Bilbija application inadmissible.

4. Conclusion as to admissibility

160. In summary, the Chamber declares the Bilbija application admissible insofar as it alleges a violation of the applicant Bilbija’s protected possession in the goodwill of the Higher Business School in Prijedor, as guaranteed by Article 1 of Protocol No. 1 to the Convention. This part of the Bilbija application is further admissible with respect to Articles 6 and 13 of the Convention. However, the remainder of the Bilbija application, in particular the claims on behalf of students of the Higher Business School, is inadmissible as manifestly ill-founded. The Chamber declares the Pepić application admissible with respect to Article 2 of Protocol No. 1 and Articles 6 and 13 of the Convention. The Chamber declares the remainder of the Pepić application inadmissible, including the claim of discrimination.

B. Merits

161. Under Article XI of the Agreement, the Chamber must next address the question of whether the facts established above disclose a breach by the Republika Srpska of its obligations under the

Agreement. Under Article I of the Agreement, the parties are obliged to “secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms,” including the rights and freedoms provided for in the Convention.

1. Right to education (Article 2 of Protocol No. 1 to the Convention)

162. The Chamber has declared the Pepić application admissible with respect to the right to education guaranteed by Article 2 of Protocol No. 1 to the Convention. The respondent Party contends that it has not violated Article 2 of Protocol No. 1 because its actions directed against the Higher Business School comply with the requirements of that provision. It emphasises that the right to education requires and allows regulation by the State. In this case the Republika Srpska submits that it merely exercised its responsibility to the public to regulate the Higher Business School, whilst in no way denying the right to education to the students of the School.

163. Article 2 of Protocol No. 1 to the Convention states as follows:

“No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the States shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”

a. Guiding legal principles

164. In the first case to consider the right to education, *Belgian Linguistics*, the European Court confirmed that Article 2 of Protocol No. 1 to the Convention “does enshrine a right” (Eur. Court HR, judgment of 23 July 1968, Series A no. 6, page 31, paragraph 3). The European Court elaborated that States are not required to establish any particular system of education nor to subsidise it, but rather merely to guarantee to persons subject to their jurisdiction “the right, in principle, to avail themselves of the means of instruction existing at a given time” (*id.*).

“The first sentence of Article 2 of the Protocol consequently guarantees, in the first place, a right to access to educational institutions existing at a given time, but such access constitutes only a part of the right to education. For the ‘right to education’ to be effective, it is further necessary, *inter alia*, that the individual who is the beneficiary should have the possibility of drawing profit from the education received that is to say, the right to obtain, in conformity with the rules in force in each State and in one form or another, official recognition of studies which he has completed” (*id.* at page 31, paragraph 4).

Apart from making and repeating this statement, the European Court has not further interpreted or applied the right to obtain official recognition of completed studies as part of the right to education enshrined in Article 2 of Protocol 1 to the Convention.

165. In *Campbell and Cosans v. United Kingdom*, a case involving corporal punishment as a disciplinary measure in public schools in Scotland, the European Court clarified that the right contained in the first sentence of Article 2 concerns a child, while the right contained in the second sentence of Article 2 concerns that child’s parent (Eur. Court HR, judgment of 25 February 1982, Series A no. 48, page 19, paragraph 40). The “fundamental right to education” set forth in the first sentence cannot be absorbed by the second sentence, which is an “adjunct” to the right in the first sentence. According to the European Court, “as shown by its very structure, Article 2 constitutes a whole that is dominated by its first sentence” (Eur. Court HR, *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, judgment of 7 December 1976, Series A no. 23, page 25, paragraph 52).

166. The European Commission of Human Rights has ruled, in effect, that the right to education is concerned primarily with elementary or secondary school education and not necessarily with advanced degree or higher specialised education. In *X v. United Kingdom*, the 27-year old applicant complained that he could not continue his studies in technology because he was serving a prison sentence (Eur. Commission HR, Decisions and Reports no. 2, decision on admissibility of 13 March 1975, pages 50-51). The European Commission concluded that “the right to education envisaged in Article 2 is concerned primarily with elementary education and not necessarily advanced studies such as

technology. Therefore, accepting the probability that the prison had no facilities for the study of technology, the Commission does not consider that the prison authorities have failed to observe the obligations of Article 2” (*id.* at page 50). However, recently the European Court declared admissible complaints concerning the arbitrary denial of the right to education by an applicant who was refused entrance to university because the authorities could not understand how he could successfully pass the entrance exam on his fourth attempt, when he had on three previous attempts failed the exam (Eur. Court HR, *Eren v. Turkey*, application no. 60856/00, decision on admissibility of 6 June 2002).

167. In *Belgian Linguistics*, the European Court further explained that the right to education allows for regulation by the State.

“The right to education guaranteed by the first sentence of Article 2 of the Protocol by its very nature calls for regulation by the State, regulation which may vary in time and place according to the needs and resources of the community and of individuals. It goes without saying that such regulation must never injure the substance of the right to education or conflict with other rights enshrined in the Convention.

“... The Convention therefore implies a just balance between the protection of the general interest of the community and the respect due to fundamental human rights, while attaching particular importance to the latter” (*id.* at page 32, paragraph 5).

168. Applying these principles, in *Jordebo v. Sweden*, the European Commission rejected a complaint concerning the Government’s refusal to grant permission to a functioning private elementary school to teach middle school classes as well (Eur. Commission HR, Decisions and Reports no. 51, decision on admissibility of 6 March 1987, pages 125-135). The applicants were the school and its headmistress, who wanted to enrol her daughter in middle school classes. The European Commission stated as follows:

“The Commission considers that it follows from the judgment of the European Court of Human Rights in the case of *Kjeldsen, Busk Madsen and Pedersen* (judgment of 7 December 1976, Series A no. 23, pages 24-25, paragraph 50) that Article 2 of Protocol No. 1 guarantees the right to start and run a private school. However, such a right cannot be a right without conditions. It must be subject to regulation by the State in order to ensure a proper educational system as a whole. The Commission recalls that the decision not to grant approval as regards classes 7 to 9 was based exclusively on the finding that the education offered at this level did not meet the condition as to the quality provided for in [the applicable law]” (*id.* at pages 128-129).

169. However, Article 2 of Protocol No. 1 does not oblige a State to subsidise any particular type of education (Eur. Commission HR, *X v. United Kingdom*, Decisions and Reports no. 14, decision on admissibility of 2 May 1978, page 182). None the less, a State also cannot discriminate in granting available financial subsidies to educational institutions (*id.*). In *X v. United Kingdom*, the Commission found no violation of Article 2 and no discrimination where the State required public schools to contribute 15% to capital costs, while it provided a 100% subsidy for such costs to public institutions. “The Commission is of the opinion that it is reasonable for the State, in relation to bodies that seek ownership and decisive control over management policy in voluntary schools, to require some degree of financial contribution” and a 15% contribution to capital costs is not “an unreasonable or disproportionate requirement” (*id.*).

b. Right to access to education

170. In the Chamber’s view, the *Pepić* application only raises issues under the first sentence of Article 2 of Protocol No. 1. These issues concern the right to access to a given course of study offered by an existing educational institution, and the right of the beneficiary, *i.e.* the student, of such educational institution to obtain official recognition of his/her completed studies, including recognition of his/her completed courses and any diploma. Although the right enshrined in the first sentence of Article 2 of Protocol No. 1 is “primarily” concerned with elementary education, the Chamber recalls that there is nothing in the wording of that provision or in the case-law of the European Court specifically restricting the right to elementary education. In this respect, the Chamber takes particular notice of the European Court’s most recent right to education case in which it

declared admissible the claim of an applicant seeking admission to university (see paragraph 166 above). Moreover, whilst the Republika Srpska was clearly not required to establish the Higher Business School, after having registered and authorised it in July 1995, certain rights guaranteed by Article 2 of Protocol No. 1 were triggered. The applicant Pepić chose to pursue his education at a two-year, higher school level educational programme in business management, which, at that time, was offered legitimately by the Higher Business School in Prijedor. In fact, the Higher Business School was and is the only institution in the Republika Srpska offering such an educational programme. Therefore, the Chamber finds that the applicant Pepić's right to study at the Higher Business School falls within the scope of his right to pursue a given course of study at an existing educational institution.

171. The Chamber recalls that the European Court has explicitly stated that a State may regulate the sphere of education; however, such regulation must achieve a balance between protection of the general public interest and respect for the individual's human rights (see paragraph 167 above). "Inherent in the whole of the Convention is a search for a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights" (Eur. Court HR, *Soering v. United Kingdom*, judgment of 7 July 1989, Series A no. 161, page 35, paragraph 89).

172. The "sole reason" given by the respondent Party for its procedural decision of 23 July 1999 prohibiting the admission of students to the Higher Business School was the allegedly inadequate capacity of the School's premises in relation to the number of students admitted (see paragraphs 37, 86 above). Alleged non-compliance with the procedural decision of 23 July 1999 in turn resulted in the procedural decisions of 14 and 19 April 2000, annulling the admission of the students and banning the operations of the School, respectively (see paragraphs 39-40 above). The Chamber notes that beyond the statement that the capacity of the School's premises was inadequate, the respondent Party has not further argued that the safety or health of the students or the larger community was in danger, nor that the students' pursuit of education was disadvantaged.

173. The procedural decision of 23 July 1999 purports to be based upon the minutes of the Education Inspectors of 17 May 1999. However, those minutes do not explicitly define any "deficiencies" by the Higher Business School, nor do the minutes give rise to an implicit conclusion of any deficiency in the capacity of the School (see paragraph 36 above). In fact, those minutes say nothing whatsoever about any inadequacy in the premises of the School; thus, they do not provide the necessary factual basis for the statements in the procedural decision. The Chamber further recalls that Mr. Ožegović, one of the Education Inspectors who performed the control on 5 April 2000, testified that he did not personally witness any insufficiency in the capacity; to the contrary, he reached his conclusion based upon reasons he could not clearly articulate at the public hearing (see paragraphs 84-86 above). In addition, the subsequent procedural decisions of 14 and 19 April 2000 fail to take any notice of the three lease contracts entered into by the School in the event it ever did need to use additional premises. Moreover, none of the students of the Higher Business School who testified at the public hearing experienced any insufficiency in the capacity of the School. Ms. Gordana Popović, who was a student during the relevant time period, persuasively testified, "I did not miss a class in two years. And every time, all the students present had a place to sit" (see paragraph 71 above).

174. Based on the evidence before the Chamber, the conclusion of the Ministry of Education that the capacity of the premises of the Higher Business School is inadequate seems factually suspect. The respondent Party has also failed to identify any clear legal basis for this conclusion in the applicable law or in any rules or regulations generally applied by the Ministry to all educational institutions (see paragraph 86 above). In addition, the Higher Business School complained in its various appeals and administrative disputes about the procedural basis for issuing the procedural decisions of 23 July 1999, 14 April 2000, and 19 April 2000. Each of these decisions was issued by the Ministry of Education and signed by Minister Nenad Suzić, acting in the first instance, rather than by the Education Inspector, acting in the first instance. As a result, the Minister of Education then reconsidered, within a very short period of time, his own decisions on appeal in the second instance. Thus, from a procedural perspective, the procedural decisions at issue also appear suspect to the Chamber. Former Minister of Education Nenad Suzić, who signed the procedural decisions, could have clarified these irregular procedures, but he failed to appear at the public

hearing. The Supreme Court of the Republika Srpska also has not clarified the legality of the procedures as the two administrative disputes raising the issue remain pending three years after they were initiated. None the less, despite these highly suspect circumstances, it is not necessary for the Chamber to make a finding on the substantive or procedural legality of the procedural decisions in question, so it will decline to do so.

175. The question for the Chamber is whether the general interest in having educational institutions with premises of adequate capacity, in terms of a certain minimum amount of available space per admitted student, in this case at the Higher Business School in Prijedor, has been fairly balanced against the applicant Pepić's right to access to education at the School. In answering this question, it is particularly striking to the Chamber that none of the students of the Higher Business School are complaining about the School's premises or in any other way. To the contrary, they have consistently expressed their support for the School and their desire to see it continue to operate in Prijedor. Thus, the respondent Party has not presented the Chamber with any evidence that the general public has any interest in having the operations of the School banned due to allegedly insufficient premises, assuming there is a legal basis to do so.

176. Presumably, the respondent Party attempted to achieve this fair balance by providing in the procedural decision of 16 May 2000 that students of the Higher Business School are entitled to continue their studies under the same curriculum at the Faculty of Economy of the Banja Luka University. However, no students have been permitted to do so (see paragraph 49 above). As Mr. Stanko Stanić, the Dean of the Faculty of Economy, clearly testified at the public hearing, since only twenty or so students applied to transfer to the Faculty of Economy, there were not enough students to justify organising classes for them. Accordingly, the Faculty of Economy concluded its obligations under the procedural decision of 16 May 2000 without admitting any students from the Higher Business School (see paragraph 80 above). The Ministry of Education made no other arrangements for students of the Higher Business School to continue their studies.

177. Thus, in the end, the Chamber observes that the Ministry of Education banned further operations of the Higher Business School under highly suspect conditions and failed to provide the students of the School with any real avenue to further pursue their studies, which they legally commenced. The Ministry also annulled the admission of students on 14 April 2000, nearly at the end of the school year 1999-2000. This was particularly injurious to the applicant Pepić, who was the last student admitted in 1999 pursuant to the express approval of the Minister of Education (see paragraphs 32, 140 above). The actions of the Ministry of Education against the Higher Business School, while not directed at the students, necessarily interfered with and disabled them from continuing their studies. In these circumstances, the Chamber concludes that the authorities of the Republika Srpska failed to achieve a fair balance between the general public's interest in having premises of adequate capacity at the Higher Business School and the applicant Pepić's right to access to education.

c. Right to official recognition of completed studies

178. The situation with respect to the applicant Pepić's right to obtain official recognition of his completed studies, including recognition of his completed courses and any eventual diploma, is, in the Chamber's view, even graver. The general interest identified by the respondent Party remains the same (see paragraph 172 above). The measures taken by the respondent Party to attempt to create a fair balance, *i.e.* to entitle students of the Higher Business School to continue their studies at the Faculty of Economy of the Banja Luka University, also remain the same (see paragraph 176 above). However, in addition to these utterly ineffective measures, authorities of the Ministry of Education of the Republika Srpska have further repeatedly announced to the public that the Higher Business School in Prijedor is illegal and the diplomas awarded to graduates will not be recognised (see paragraphs 61-64 above). The Ministry of Education provided similar information to, *inter alia*, the Development and Employment Fund and the Health Insurance Fund of the Republika Srpska, thereby resulting in the denial of scholarships to potential students of the Higher Business School (see paragraph 62 above). Although in the most recent statements made to the press in December 2002, the Minister of Education implied that diplomas of students enrolling prior to the ban will be recognised (see paragraph 64 above), the general impression created in the public is that on the whole, the Higher Business School is illegal and the Ministry will not recognise its diplomas. At the

public hearing Ms. Gordana Popović confirmed that when she has applied for vacancies, her employment has been repeatedly denied because her potential employers believed that her diploma from the Higher Business School was not valid (see paragraph 73 above).

179. The Chamber notes that the Ministry of Education has absolutely no justification for informing the public or creating the impression in the public that it will not recognise the diplomas of students who graduated from the Higher Business School up through the end of school year 1998-1999. It further has no justification for refusing to recognise the courses completed by students of the Higher Business School up until May 2000, when the procedural decision of the Ministry of Education of 19 April 2000 prohibiting the operations of the School became final in the administrative proceedings (*konačno*) and enforceable. Moreover, taking into account the Chamber's finding that the ban on operations of the Higher Business School and the annulment of admission of students violated the applicant Pepić's right to access to education, the Chamber further finds that the Ministry of Education has no justification for refusing to recognise the courses completed by and the diplomas awarded to students of the Higher Business School after May 2000.

180. Thus, in the Chamber's opinion, the Ministry of Education of the Republika Srpska failed to achieve a fair balance between the general public's interest in having larger premises at the Higher Business School and the applicant Pepić's right to official recognition of his completed studies at the School.

d. Conclusion as to right to education

181. For the reasons explained above, the Chamber concludes that the authorities of the Republika Srpska breached the applicant Pepić's right to education guaranteed by Article 2 of Protocol No. 1 to the Convention. In banning the operations of the Higher Business School and annulling the admission of students, the Ministry of Education of the Republika Srpska misused its regulatory authority in the sphere of education. It failed to achieve a fair balance between the general public's interest in having larger premises at the Higher Business School and the applicant Pepić's fundamental right to education, including his right to access to a pre-existing educational institution and his right to obtain official recognition of his completed studies at that institution.

2. Right to peaceful enjoyment of possessions (Article 1 of Protocol No. 1 to the Convention)

182. The Chamber has declared the Bilbija application admissible in part with respect to the allegations of a violation of her right to peaceful enjoyment of possessions, namely the goodwill of the Higher Business School. The respondent Party considers the application without merit, but it did not offer any specific arguments in relation to Article 1 of Protocol No. 1 to the Convention.

183. Article 1 of Protocol No. 1 to the Convention states as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

"The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

184. Article 1 of Protocol No. 1 comprises three distinct rules. The first rule, which is of a general nature, enshrines the principle of peaceful enjoyment of property. It is set out in the first sentence of the first paragraph. The second rule covers deprivation of possessions and subjects it to the condition that the deprivation must be in the public interest and subject to conditions provided for by law and by the general principles of international law. It appears in the second sentence of the same paragraph. The third rule recognises that States are entitled, amongst other things, to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for that purpose. It is contained in the second paragraph (see, e.g., case no. CH/96/29, *Islamic Community*, decision on admissibility and merits of 11 June 1999, paragraph 190, Decisions

January-July 1999).

a. Existence of a “possession”

185. As explained above, the value of goodwill of a business may constitute a protected “possession”, within the meaning of Article 1 of Protocol No. 1 (see paragraphs 156-157 above). In the context of the admissibility of the application, the Chamber has already determined that as a founder and guarantor of the Higher Business School, the applicant Bilbija has a valuable asset, that is a protected “possession”, in the goodwill associated with the activities of the Higher Business School, which commenced in July 1995 and continue to the present day (see paragraph 158 above). Using the words of the European Court, by dint of her own work, the applicant built up a student body and unique area of academic expertise that constitutes a valuable asset to her, thereby protected by Article 1 of Protocol No. 1.

b. Interference with a protected “possession”

186. The Chamber recalls that in the context of its arguments in relation to the right to education, the respondent Party has argued that in this case, it “possessed the right to interfere with the operation of this private school” (see paragraph 124 above). In fact, the interference in this case seems indisputable. On 23 July 1999, the Ministry of Education of the Republika Srpska prohibited the Higher Business School from admitting any new students for the school year 1999-2000 until the identified deficiency of the inadequate capacity of the premises was removed. As a result of non-compliance with this procedural decision, the Ministry of Education then annulled the admission of students on 14 April 2000 and banned the operations of the School on 19 April 2000. Although the Higher Business School has *de facto* continued its educational activities, such procedural decisions by the Ministry of Education radically affected the goodwill of the School. The number of new students fell, and the uncertain legal status of the School and its diplomas was widely reported in the local media. Consequently, the Chamber finds that the Ministry of Education interfered with the peaceful enjoyment of the goodwill of the Higher Business School.

c. Fair balance test

187. In order for an interference with a protected possession to be permissible, it must not only serve a legitimate aim in the public interest, but there must also be a reasonable relationship of proportionality between the means employed and the aim sought to be realised (Eur. Court HR, *James v. United Kingdom*, judgment of 21 February 1986, Series A no. 98-B, paragraph 50). Thus, the Court has recognised that running through the three distinct rules in Article 1 of Protocol No. 1 to the Convention is a “fair balance” test; that is, “the Court must determine whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights. The search for this balance is inherent in the whole of the Convention and is also reflected in the structure of Article 1” (Eur. Court HR, *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, paragraph 69 (citation omitted)).

188. The Chamber observes that the fair balance test prescribed by Article 1 of Protocol No. 1 is similar, if not precisely the same, as the fair balance test prescribed by Article 2 of Protocol No. 1. The difference here is that the interference is with the goodwill of the School rather than with the right of the School’s students to continue their education. Thus, the question for the Chamber is whether the general interest in having premises of greater capacity at the Higher Business School has been fairly balanced against the applicant Bilbija’s right to peaceful enjoyment of her possessions. The Chamber notes that when the Ministry annulled the admission of students and banned the operations of the School, it took no action to attempt to balance these interests, presumably because it did not believe it was required to do so. Accordingly, its actions cannot, in the Chamber’s view, be considered proportional. To the contrary, the statements issued by officials of the Ministry of Education to the media maligning the reputation of the Higher Business School only served to further injure its goodwill.

189. In these circumstances and taking into account the reasons set forth above, the Chamber concludes that the authorities of the Republika Srpska failed to achieve a fair balance between the

general public's interest in having larger premises at the Higher Business School and the applicant Bilbija's protected possession in the goodwill of the Higher Business School.

190. Taking into account that the Chamber has found that the interference with the applicant Bilbija's protected possession was not proportional, it is not necessary for the Chamber to further consider whether the interference was in accordance with the law.

d. Conclusion as to right to peaceful enjoyment of possessions

191. Therefore, the Chamber concludes that the authorities of the Republika Srpska breached the applicant Bilbija's right to peaceful enjoyment of her possessions guaranteed by Article 1 of Protocol No. 1 to the Convention. In banning the operations of the Higher Business School and annulling the admission of students, the Ministry of Education of the Republika Srpska failed to act in a proportionate manner *vis-à-vis* the applicant Bilbija's valuable asset in the goodwill of the School.

3. Right to a court (Article 6 of the Convention) and right to an effective remedy (Article 13 of the Convention)

192. Article 6 paragraph 1 of the Convention states as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”

193. Article 13 of the Convention states as follows:

“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

194. Taking into consideration its conclusion that the respondent Party has violated the applicant Pepić's right to education and the applicant Bilbija's right to peaceful enjoyment of her possessions, the Chamber decides that it is not necessary separately to examine the applications under Article 6 paragraph 1 and Article 13 of the Convention.

VIII. REMEDIES

195. Under Article XI(1)(b) of the Agreement the Chamber must address the question of what steps shall be taken by the respondent Party to remedy the established breaches of the Agreement. In this connection the Chamber shall consider issuing orders to cease and desist, monetary relief as well as provisional measures. The Chamber is not necessarily bound by the applicants' claims.

196. Apart from the requests for provisional measures, the applicants did not otherwise set forth claims for remedies.

197. The Chamber recalls that it has found a violation of the applicant Pepić's right to education guaranteed by Article 2 of Protocol No. 1 to the Convention, including his right to access to a pre-existing educational institution and his right to obtain official recognition of his completed studies at that institution, and it has further found a violation of the applicant Bilbija's right to peaceful enjoyment of her possessions, *i.e.* the goodwill of the Higher Business School, guaranteed by Article 1 of Protocol No. 1 to the Convention.

198. As remedies for the established violations, the Chamber will order the Ministry of Education of the Republika Srpska to nullify the procedural decisions of 23 July 1999, 14 April 2000, and 19 April 2000, with retroactive effect, and to officially recognise the diplomas issued by the Higher Business School to graduated students and the studies officially completed by current students. The Ministry of Education shall take such official act or acts within one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure. The Chamber will further order the Republika Srpska to publish the decision or decisions on nullification and recognition of diplomas and completed studies by the Ministry of Education in the Official Gazette of the Republika Srpska within one month from the date of issuance.

199. In addition, taking into consideration that the authorities of the Ministry of Education issued statements to the media which damaged the goodwill of the Higher Business School and raised doubts in the public about the validity of diplomas issued to students of the Higher Business School, the Chamber will order the Republika Srpska to publish the text of the Chamber's official press release on these particular cases in the national language in the newspapers in which such statements were published, namely, *Glas Srpske*, *Nezavisne Novine*, and *Blic*. The Republika Srpska shall publish the press release on these particular cases, at its own expense, within two weeks from

the date on which the present decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure.

200. The Chamber will not order the payment of any compensation to the applicants.

IX. CONCLUSIONS

201. For these reasons, the Chamber decides,

1. by 5 votes to 2, to declare admissible case no. CH/00/6183 with respect to the applicant Bilbija's protected possession in the goodwill of the Higher Business School, as guaranteed by Article 1 of Protocol No. 1 to the European Convention on Human Rights, as well as with respect to Article 6 paragraph 1 and Article 13 of the Convention;

2. unanimously, to declare the remainder of case no. CH/00/6183 inadmissible as manifestly ill-founded;

3. by 5 votes to 2, to declare admissible case no. CH/00/6231 with respect to Article 2 of Protocol No. 1 to the Convention, as well as with respect to Article 6 paragraph 1 and Article 13 of the Convention;

4. unanimously, to declare the remainder of case no. CH/00/6231 inadmissible as manifestly ill-founded;

5. by 5 votes to 2, that in case no. CH/00/6231 there has been a violation of the applicant Pepić's right to education guaranteed by Article 2 of Protocol No. 1 to the Convention, including his right to access to a pre-existing educational institution and his right to obtain official recognition of his completed studies at that institution, the Republika Srpska thereby being in breach of Article I of the Human Rights Agreement;

6. by 5 votes to 2, that in case no. CH/00/6183 there has been a violation of the applicant Bilbija's right to peaceful enjoyment of her possessions, *i.e.* the goodwill of the Higher Business School of Industrial Engineering, Organisation and Management in Prijedor, guaranteed by Article 1 of Protocol No. 1 to the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

7. unanimously, that it is not necessary separately to examine the applications under Article 6 paragraph 1 or Article 13 of the Convention;

8. by 5 votes to 2, to order the Ministry of Education of the Republika Srpska to nullify the procedural decisions of 23 July 1999 (no. 6-01-1416/99), 14 April 2000 (no. 6-01-952/2000), and 19 April 2000 (no. 6-01-953/2000), with retroactive effect, and to officially recognise the diplomas issued by the Higher Business School to graduated students and the studies officially completed by current students, such official act or acts to be taken within one month from the date on which the present decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure;

9. by 5 votes to 2, to order the Republika Srpska to publish the decision or decisions on nullification and recognition of diplomas and completed studies mentioned in the preceding conclusion in the Official Gazette of the Republika Srpska within one month from the date of issuance;

10. by 5 votes to 2, to order the Republika Srpska to publish, at its own expense, the text of the Chamber's official press release on case nos. CH/00/6183 and CH/00/6231 in the national language in *Glas Srpske*, *Nezavisne Novine*, and *Blic*, within two weeks from the date on which the present decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure; and

CH/00/6183 and CH/00/6231

11. unanimously, to order the Republika Srpska report to it no later than two months after the date on which the present decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the steps taken by it to comply with the above orders.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel

Annex Dissenting opinion of Mr. Rona Aybay, joined by Mr. Miodrag Pajić

ANNEX

According to Rule 61 of the Chamber's Rules of Procedure, this Annex contains the dissenting opinion of Mr. Rona Aybay, joined by Mr. Miodrag Pajić.

**DISSENTING OPINION OF MR. RONA AYBAY,
JOINED BY MR. MIODRAG PAJIĆ**

The majority of members find that the authorities of the Republika Srpska breached the applicant Bilbija's right to peaceful enjoyment of her possessions, guaranteed by Article 1 of Protocol No. 1 to the Convention. This finding is based upon the argument that the applicant Bilbija has a valuable asset in the goodwill of the School in question (see paragraph 191 of the decision).

I cannot agree with this conclusion because I have strong doubts about the validity of this reasoning.

Firstly, it is interesting to note on the one hand that the applicant Bilbija was not a party to the cases brought before the courts of the Republika Srpska on this issue. On the other hand, the Higher Business School, which initiated lawsuits in administrative dispute proceedings before the courts of the Republika Srpska, did not file an application with the Chamber. In other words, the applicant Bilbija's application to the Chamber appears to be her first attempt to defend her rights guaranteed by Article 1 of Protocol No. 1 to the Convention before a court.

Secondly, it should be noted that the majority of members rightly find that "the applicant Bilbija has not established that she has a protected 'possession' in her investment of 1,000 KM [about €500 Euros] in the Higher Business School. Her investment cannot be likened to the purchase of shares in a company, the economic value of which she hoped to improve upon through successful business activities. In fact, her testimony at the public hearing established precisely the opposite" (see paragraph 158 of the decision). However, the majority finds "it established that the applicant Bilbija has a protected 'possession' in the goodwill associated with the functioning of the Higher Business School. ... As a founder and guarantor of that School, the goodwill of the School constituted a valuable asset to the applicant Bilbija" (see paragraph 158 of the decision; see also paragraph 191 of the decision). The majority, rightly, "recalls that a wide variety of tangible and intangible assets may fall within the scope of 'possessions' protected by Article 1 of Protocol No. 1, including a company share with economic value" (see paragraph 155 of the decision; see also paragraphs 155-157 for references to the case-law of the European Court of Human Rights).

Although I agree with the approach and legal reasoning employed in the case-law of the European Court of Human Rights, which has been followed by the Chamber, I find it difficult to agree with the conclusion reached by the majority in this particular decision. As I see it, what the applicant Bilbija has here is, simply, a "moral" interest, but not an "asset" which involves any economic value. This was confirmed by the applicant Bilbija herself during the public hearing. Therefore, her interest does not fall within the scope of Article 1 of Protocol No. 1 to the Convention, which protects "assets" ("possessions") with economic value — whether tangible or not. To interpret this Article in such a way that moral expectations are also covered by that provision would be going too far.

For these reasons, I respectfully dissent.

(signed)
Rona Aybay

Miodrag Pajić

(signed)